

GAHC010044532022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1706/2022

OMAR ALI SK AND ANR
S/O BARU SK
VILL- GHOPER GAON
P.O. CHAPAR
P.S. CHAPAR
DIST. DHUBRI, ASSAM
PIN-783371

2: AYESHA KHATUN
VILL- GHOPER GAON
P.O. CHAPAR
P.S. CHAPAR
DIST. DHUBRI
ASSAM
PIN-78337

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
HOME AND POLITICAL DEPARTMENT, DISPUR, GUWAHATI-06.

2: THE ASSAM STATE LEGAL SERVICES AUTHORITY

REP. BY ITS MEMBER SECRETARY
GHY-01.

3: THE DISTRICT LEGAL SERVICE AUTHORITY

BONGAIGAON
ASSAM
REP. BY ITS SECRETARY
P.O.
P.S. AND DIST. BONGAIGAON

ASSAM
PIN-783380

4:THE CHAIRMAN

DISTRICT LEGAL SERVICES AUTHORITY
BONGAIGAON
ASSAM
P.O.
P.S. AND DIST. BONGAIGAON
ASSAM
PIN-78338

Advocate for the Petitioner : MR. M U MONDAL, MR A ALIM SK,MR K ISLAM,MD. I H KHAN

Advocate for the Respondent : GA, ASSAM, MS. R. S. CHOUDHURY, SC, ASLSA

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 21-10-2024

Heard Mr. K. Islam, learned counsel for the petitioners; Mr. J. Handique, learned Junior Government Advocate, Assam for the respondent nos. 1, 3 & 4; and Ms. R. Choudhury, learned Standing Counsel, Assam State Legal Services Authority for the respondent no. 2.

2. The two petitioners have asserted that they were the parents of one Atowar Rahman, who was allegedly murdered on 28.04.2012. In connection with the alleged murder of Atowar Rahman, one First Information Report [FIR] was lodged on 03.05.2012 and the said FIR was registered as Jogighopa Police Station Case no. 91/2012 for the offences under Sections 302/201, Indian Penal Code [IPC]. The case was investigated into and a charge-sheet was laid under

Section 173[2], Code of Criminal Procedure [CrPC] finding a *prima facie* case against two accused persons, charge-sheeted therein, for committing the offences under Sections 302/201, IPC. On submission of the charge-sheet and after committal of the case records to the jurisdictional Court of Sessions, the case was registered as Sessions Case no. 151[J] of 2014. Subsequently, the trial of Sessions Case no. 151[J] of 2014 was held and concluded before the Court of Additional Sessions Judge [FTC], NC, Abhayapuri [‘the trial court’, for short]. On conclusion of the trial, the learned trial court delivered a Judgment and Order on 16.05.2019 with a finding that the prosecution side failed to produce sufficient evidence against the accused persons and, accordingly, the learned trial court acquitted both the accused persons from the charges leveled against them.

3. It is the case of the petitioners that as per the Post-Mortem Examination [PME] Report submitted in connection with Jogighopa Police Station Case no. 91/2012, it was opined that the death of the deceased, Atowar Rahman was due to hemorrhagic shock resulting from a cut throat injury, which was ante-mortem in nature. As per the PME Report, the injury was caused by a sharp cutting moderately heavy weapon and the injury was homicidal in nature.

4. It is the further case of the petitioners that the learned trial court while rendering the Judgment and Order of acquittal, did not consider the matter of granting compensation to the petitioners as the parents of the deceased under Section 357A, CrPC and the Assam Victim Compensation Scheme, 2012, as amended, framed thereunder.

5. The petitioners have preferred this writ petition with the contention that despite submission of an application before the Member Secretary, Assam State Legal Services Authority [ASLSA] on 25.02.2020, the said authority did not take any steps as regards the matter of granting compensation to the petitioners under Section 357A, CrPC and the Assam Victim Compensation Scheme, 2012, as amended.

6. An affidavit-in-opposition has been filed on behalf of the respondent no. 2, that is, the Assam State Legal Services Authority [ASLSA] stating inter alia that on receipt of the application from the petitioners, the said application was forwarded to the District Legal Services Authority, Bongaigaon on 21.03.2020 by the ASLSA with a request to consider the application.

7. After hearing the learned counsel for the parties and having gone through the materials brought on record, it is noticed that in the application dated 25.02.2020 made before the ASLSA, the petitioners did not make any mention of the fact that the trial of Sessions Case no. 151[J]/2014 was held and concluded before the Court of learned Additional Sessions Judge [FTC], NC, Abhayapuri within the Sessions District of Bongaigaon. The petitioners in the application dated 25.02.2020 had only mentioned their address within the district of Dhubri and without mentioning about the outcome of the Sessions Case no. 151[J]/2014, which was concluded with the acquittal of the accused persons with the delivery of the Judgment and Order dated 16.05.2019.

8. It was in the above backdrop, the application of the petitioners was forwarded to the District Legal Services Authority, Dhubri.

9. On the other hand, the District Legal Services Authority, Bongaigaon vide its subsequent Communications dated 06.08.2022 and 27.09.2024 had communicated to the ASLSA that no application was received from the petitioners nor the petitioners approached the office of the DLSA, Bongaigaon for grant of compensation.

10. It, thus, transpires from the above facts and circumstances that no application for grant of compensation under Section 354A, CrPC and the Assam Victim Compensation Scheme, 2012 was received by the jurisdictional DLSA, that is, the District Legal Services Authority, Bongaigaon since 2020 as mistakenly, the application of the petitioners stood forwarded to the District Legal Services Authority, Dhubri on 21.03.2020. Admittedly, the application of the petitioners is required to be considered by the jurisdictional District Legal Services Authority, that is, the District legal Services Authority at Bongaigaon.

11. The State Government in exercise of its power conferred under Section 357A, CrPC has framed the scheme named 'Assam Victim Compensation Scheme, 2012'. As per the definition of 'victim', defined in Clause 2[f] therein, 'victim' means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression 'victim' includes his or her guardian or legal heir.

12. The procedure for grant of compensation is laid down in Clause 5 therein and the same reads as under :-

- [1] Whenever a recommendation is made by the Court or an application is made by any victim or his dependents under sub-section [2] of Section 357-A of the Act, to the State Legal Services Authority or the District Legal Services Authority, as the case may be, the said Authorities respectively shall examine the case and verify the contents of the claim with regard to the loss or injury caused to victim and arising out of the reported criminal activity and may call for any other relevant information necessary in order to determine genuineness. After verifying the claim, the District Legal Service Authority or the State Legal Services Authority, as the case may be, shall, after due inquiry, award compensation within two months, in accordance with provisions of this Scheme.
- [2] Compensation under this Scheme shall be paid subject to the condition that if the trial court while passing judgment at later date, orders the accused persons to pay any amount by way of compensation under sub-section [1] [b] of Section 357 of the Act, the victim/dependents shall remit an amount of compensation, or the amount ordered equal to the amount of compensation or the amount ordered to be paid under sub-section [3] of section 357 of the Act, whichever is less. An undertaking to this effect shall be given by the victim/dependents before the disbursement of the compensation amount.
- [3] The District Legal Services Authority shall decide the quantum of compensation to be awarded to the victim or these dependents on the basis of loss caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation including such incidental charges as funeral expenses etc. The Compensation may vary from case to case depending on facts and circumstances of each case.
- [4] According to the Schedule of this Scheme, the quantum of compensation to be awarded under the Scheme shall be disbursed to the victim or his dependents, as the case may be, from the Fund.
- [5] Compensation received by the victim from the Central Government, State Government, Insurance Company or any other institution in relation to the crime in question namely, insurance, ex-gratia and/or payment received under any other Act or State-run scheme, shall be considered as part of the compensation amount

under this scheme and if the eligible compensation amount exceeds the payments received by the victim from collateral sources mentioned above, the balance shall be paid out of the Fund.

- [6] In fixing the quantum of compensation, regard must be had to the minimum wages and schedule to motor vehicle act, 1988.
- [7] The State or the District Legal Services Authority, to alleviate the suffering of the victim, may order for immediate first aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer-in-charge of the police station or Magistrate of the area concerned or any other interim relief as it may deem fit.
- [8] The compensation to the victim under this scheme shall not exceed the maximum amount prescribed in the Schedule.
- [9] State Government may review the maximum limit of compensation indicated in the Schedule by issuing official notification from time to time.

13. As per sub-clause [4] of Clause 4 of the Assam Victim Compensation Scheme, 2012, where the perpetrator of heinous crime is not traceable or goes unpunished after trial, but the victim is identifiable and the victim has to be rehabilitated physically and mentally, such victim may also apply for grant of compensation under sub-section [4] of Section 357-A of the Act.

14. It has been brought to the notice of the Court that Clause 7 thereof has provided for a period of limitation. As per Clause 7, no claim made by the victim or his dependents under sub-section [4] of Section 357-A of the Act shall be entertained after a period of six months from occurrence of the crime, provided that the District Legal Services Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the claim.

15. In the fact situation obtaining in the case in hand, briefly narrated hereinabove, this Court is of the considered view that this writ petition can be disposed of by providing an opportunity to the petitioners to submit an application before the jurisdictional District Legal Services Authority, that is, the District Legal Services Authority, Bongaigaon seeking grant of compensation in terms of Clause 4[4] of the Assam Victim Compensation Scheme, 2012 within a period of 2 [two] weeks from today and in the event such an application is filed by the petitioners within the said period, the jurisdictional Legal Services Authority shall proceed to treat such application as an application under sub-section [4] of Section 357A, CrPC and Clause 4[4] of the Assam Victim Compensation Scheme, 2012, after considering the matter of delay in exercise of the power given under the proviso to Clause 7 of the Assam Victim Compensation Scheme, 2012 qua the facts and circumstances under which the application is filed after a period of delay. As the incident of alleged murder of the minor child of the petitioners occurred on 28.04.2012, it is expected that the jurisdictional Legal Services Authority shall consider and complete the enquiry regarding grant of adequate compensation as per the period of time prescribed in the Assam Victim Compensation Scheme, 2012 and the CrPC.

16. This Order disposes of the writ petition.

JUDGE

Comparing Assistant