

GAHC010011322016



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

Case No. : WP(C)/1733/2016

MS. MOMITA DAS
D/O LT. SUBASH CHANDRA DAS, R/O VILLAGE AND P.O. PAIKAN
(TEMPUR), P.S. AND DIST- HAILAKANDI, ASSAM

VERSUS

THE CHIEF SECRETARY , GOVERNMENT OF ASSAM and 5 ORS.
DISPUR, GHY-6

2:THE COMMISSIONER AND SECY. TO THE GOVT.OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

3:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
HEALTH DEPTT.
DISPUR
GHY-6

4:THE INSPECTOR GENERAL OF PRISIONS
ASSAM
KHANAPARA
GHY-22

5:THE SUPERINTENDENT
GAUHATI MEDICAL COLLEGE and HOSPITAL
GHY-32

6:THE SUPERINTENDENT
SILCHAR MEDICAL COLLEGE and HOSPITAL
SILCHAR
ASSAM

PIN-78801

Advocate for the Petitioner : MR.B BISHAYA

Advocate for the Respondent : SC, HEALTH

Linked Case : I.A.(Civil)/379/2021

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Advocate for : MR. B U LASKAR
Advocate for : GA
ASSAM appearing for THE CHIEF SECRETARY
GOVERNMENT OF ASSAM AND 5 ORS.

B E F O R E
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI
ORDER

22.02.2024

Heard Mr. B. U. Laskar, learned counsel for the petitioner. Also heard Ms. U. Das, learned Addl. Senior Government Advocate, Assam for respondent Nos. 1, 2 and 4 and Mr. H. Borah, learned counsel appearing for respondent Nos. 3, 5 and 6.

- 2.** By filing the writ petition the writ petitioner is seeking compensation of ex-gratia amount of Rs. 6,00,000/- (Rupees six lakh) only from the respondent authority for causing death of the petitioner's son i.e. Sambhu Das @ Bijoy Das due to medical negligence while he was serving sentence under the District Jail, Hailakandi in connection with Session Case No. 2/2002.
- 3.** The case in brief is that the son of the petitioner was suffering from cardiac disease while he was suffering sentence in the Jail. He was accordingly admitted in Silchar Medical College & Hospital on 30.04.2014. It is the further case of the petitioner that the Medical College treated her son normally instead of giving him cardiac treatment and referred him to Hayatt Hospital at Guwahati on 29.05.2014.
- 4.** It is the further case of the petitioner that thereafter the petitioner's son was transferred to Central Jail, Guwahati on 13.06.2014 and during that period i.e. 29.05.2014 to 13.06.2014, the petitioner's son was negligently kept inside the Guard room of the Silchar Medical College Hospital, Silchar.
- 5.** It is the further case of the petitioner that the Central Jail authority admitted the petitioner's son in Gauhati Medical College & Hospital, Guwahati on 23.06.2014 instead of Hayatt Hospital and from 14.06.2014 to 23.06.2014, he was in Central Jail without proper medical treatment. The Gauhati Medical College and Hospital authority

despite of collecting all the medical records and reports, negligently kept the patient in Medicine Ward instead of Cardiology Department and it was only on 08.08.2014 that the petitioner's son was admitted in the Cardiology Department. Though the Cardiology Department referred the petitioner's son to attend in All India Institute of Medical Science (AIIMS) Hospital, New Delhi, no medical facilities was provided to the petitioner's son and ultimately the condition of the petitioner's son deteriorated and lastly died on 20.09.2014. It is under such circumstances, the petitioner preferred writ petition seeking adequate compensation.

6. Mr. B.U. Laskar, learned counsel for the petitioner submits that the respondents have not provided proper and adequate treatment to the petitioner's son and it is because of the negligence of the respondents, the petitioner's son finally passed away.

7. Ms. U. Das, learned Addl. Senior Government Advocate, Assam on the other hand strongly opposes the contention of the petitioner. She submits that at all time adequate and proper treatments were afforded to the petitioner's son.

8. By drawing attention of this Court to annexure 4 of the affidavit-in-opposition at page 10, Ms. U. Das points out from the discharged summary issued by the Cardiothoracic Sciences Centre, Department of Cardiology, AIIMS, New Delhi that though the petitioner's son was taken to AIIMS for better cardiac treatment and wherein he was suggested for surgery; however he was not ready for undergoing the surgery despite the risk of not undergoing surgery was properly explained out to him. It further appears that the petitioner finally got himself discharged from AIIMS against medical advice.

9. I have heard the submissions made at the bar and I have perused the materials available on record.

10. It appears from the medical records with reports placed by the respondents, which were obtained from Superintendent, District Jail, Hailkandi. Supdt., Central Jail, Guwahati & Superintendent, GMCH vide letters No. HDJ.66/2016/328 dated 30.04.2016, No. GHJ.1/2016/1321 dated 25.04.2016 and No. MCH/Card/2016/36 dated 16.04.2014 respectively, that as per referral Medical Board of SMCH on 10.01.2007, the petitioner's son was shifted to Central Jail, Tihar to facilitate better medical treatment at AIIMS New Delhi during August, 2009. As per estimate of AIIMS, New Delhi, the SBI Demand Draft bearing No. 467803 dated 16.09.2009 for amount of

Rs. 98,500/- in favour of "AIIMS CT PATIENT'S ACCOUNT" also sent to Superintendent, Central Jail, No. 3 Tihar, New Delhi for surgery vide letter No. PRI.151/2008/27 dated 17.09.2009. Unfortunately, the Tihar Jail authority informed the Respondent No. 4 (I.G. of Prisons, Assam) and the Superintendent, District Jail, Hailakandi that the convict Sambhu Das i.e. petitioner's son refused for undergoing surgery, so he was discharged from AIIMS on 23.09.2009 vide message No. F.3/SCJ.3/ASW/1222 dated 04.11.2009.

11. It also appears that after discharge from AIIMS, the petitioner's son came back to District Jail, Hailakandi. Due to deterioration of health condition, the petitioner's son was again shifted to SMCH on 30.04.2014 as per advice of Medical Board. Later, on 29.05.2014 the Medical referral Board of SMCH referred the patient to Hayatt Hospital, Guwahati for special investigation and treatment. Though treatment was provided at Guwahati Hospital, the petitioner's son was passed away.

12. It appears that though the petitioner's son was advised for surgery by AIIMS, New Delhi, he was not ready to undergo the said surgery and instead got himself discharged against the advice of the Medical Authority. It further appears that adequate treatment at all times was afforded to him by the respondent authorities and had also taken him to AIIMS, New Delhi for treatment. It further appears that the respondent authorities had made all the necessary payment to the Hospital authorities at AIIMS, but it was at the instance of the petitioner's son that he was discharged against the medical advice. It is evident from the records that there is no negligence by the respondent authorities as regards providing the medical treatment to the petitioner's son.

13. Hence, no case of compensation as sought for in this writ petition is made out.

14. In view of the above, the writ petition stands dismissed. No cost.

JUDGE

Comparing Assistant