

Soleman Bibi Vs. E.i. Ry.

Soleman Bibi Vs. E.i. Ry.

SooperKanoon Citation : sooperkanoon.com/851733

Court : Kolkata

Decided On : Feb-07-1933

Reported in : AIR1933Cal358a

Appellant : Soleman Bibi

Respondent : E.i. Ry.

Judgement :

Ameer Ali, J.

1. This is a reference under Section 27, Workmen's Compensation Act, by the Commissioner for Bengal. The question referred is as to the meaning of the expression 'unmarried daughter' in Section 2(1)(d) of the Act. The applicant is the daughter of the deceased workman; she is a widow and it is not disputed that she lived with and was maintained by her father during widowhood for about eight years. She was at the date of the death of her father his only relative. Before the Commissioner the applicant relied upon the case of Moti Bai v. N.W. By. A I R 1932 Lah 1 in which it was held that the expression 'unmarried sister' included widowed sister. The learned Commissioner had certain doubts as to the correctness of that decision and at the request of both parties to the proceeding he has referred the question to this Court in a careful and well-considered letter of reference dated 20th July 1932. The Commissioner's two main reasons for questioning the correctness of the decision referred to are expressed by him at the

end of his letter of reference as follows:

First I find great difficulty in holding that discussions of the construction of settlements and wills were in pari materia; [he refers to the English authorities which formed the basis of the decision in Moti Bai's case AIR 1932 Lah 1]; and secondly, there being no element of de facto dependency in the definition in the Act, the observations at p. 232 (of 13 Lah.) Moti Bai's case AIR 1932 Lah 1 appear to me to introduce an extraneous factor into the discussion.

2. With both these observations I agree subject to this, that I do not read the remarks at p. 232 aa meaning that the applicant's claim was adjudged or awarded on the basis of de facto dependency. I read them as meaning that where the legislature has sought to give the connotation of the word dependents' by setting out descriptions of certain relatives, and one of those descriptions is uncertain, it is relevant to consider who according to the ordinary notions of the people as regarded as dependents.'

3. With regard to the meaning of the word 'unmarried' the learned Commissioner expresses his own view at the end of Clause 3 and the beginning of C1.4 of the letter of reference as follows: (1) that the word 'unmarried' has a primary and a secondary significance; (2) that in its primary or ordinary signification the word 'unmarried' means 'never having been married'; and. (3) that the application of the secondary meaning of the word 'unmarried' is entirely a matter of context and circumstances. These propositions he founds upon a reference to the dictionary and his reading of the English authorities to which he had access.

4. With regard to the dictionary meaning of the word I am however of opinion that the view taken by the learned Commissioner is not correct. In all the general dictionaries to which I have referred-Murray's Dictionary, Johnson's Dictionary and some of the later ones-the meaning given is as 'not married' or 'single' and another meaning given is as 'never having been married.' On the other hand in Stroude's Judicial Dictionary, which of course is based upon legal decisions, there is a definite division into primary and secondary meanings-the primary meaning being given as 'never having been married.'

5. For a discussion of the authorities and the circumstances under which the Courts have held one or other meaning to apply reference may be made to three passages in Jarman on Wills, Edn. 7, respectively, at pp. 589, 1251 and 1597. I propose to refer to certain of the cases cited in order of date.

6. In *Moberly v. Strode* (1797) 3 Ves Jr 450, 'never married' is said to be 'the common and usual meaning in a will' and again as 'the common acceptance of it in language.' At p. 454 there is a reference to the Statute 3 Will and Mary Ch. 11, Section 7 (a Poor Law Act) where 'unmarried' is used as not married at the time. In *Maugham v. Vincent* (1340) 9 LJCh 329, at p. 331, 'never married' is referred to as 'the common use of the word, but not 'necessarily the meaning'; 'strictly speaking if; would mean not being in a state of marriage or otherwise 'discoverte'.' In *Clarke v. Colls* (1861) 9 HLC 601, (a report which was not available to the Commissioner) at p. 612 it is said that the expression 'may without violence of language mean either,' and at p. 615 it is referred to as 'capable of two constructions'...the context must determine.'

7. The argument in that case was based not upon primary and secondary meaning, but upon redundancy. In *Day v. Barnard* (1861) 30 LJCh 220, at p. 221, it is said that the word unmarried popularly and most frequently means never married,' but the popular sense is not the grammatical or dictionary sense.' That it is a word therefore which has 'a flexible meaning.' In *Dalrymple v. Hall* (1881) 16 Ch D 715, at p. 716, it is stated that the ordinary meaning is never married;' and in the result the Judge decided that as there was no context to indicate the meaning of the word 'unmarried' he would attribute to it the ordinary meaning 'without ever having been married.' In *lie. Sergeant* (1883) 26 Ch D 575 at p. 576 it was stated that the 'primary and natural sense' is 'never married' and that if the instrument is colourless it would be construed in that sense. Lastly in *Blundell v. De Falbe* (1889) 57 LJCh 576, at p. 577, it is stated that 'never married' is 'the first of the meanings, the more ordinary and the more usual,' but that it is 'a very flexible word and is constantly used in ordinary life in each of the two meanings.'

8. I would therefore prefer to state the result of the authorities as to the meaning of the word as follows: (1) That the dictionary or grammatical sense of the word is not

married; (2) that the popular and more usual sense is never having been married; (3) that the word is commonly used in either sense and is therefore a 'flexible' or equivocal term; (4) that for this reason the meaning must in all cases be discovered from the context; (5) that in the case of deeds and wills where there is no context, where the document is completely colourless, the popular sense will usually be adopted. In other words I think it is putting it too high to say that in all cases there is a primary meaning and a secondary meaning or that the first is the rule and the second is the exception. With regard to the special rules for the construction of Statutes one rule is that words may and normally should be construed in their popular sense: see Maxwell, Edn. 7, p. 47. There is however another rule that words should be construed so as to advance the remedy provided by the Act: see p. 59 and the following. The two cases illustrative of this rule which have some topical connexion with the present case are *Jones v. Davis* (1901) 1KB 118, where in a Statute, relating to another matter altogether, 'single woman' was construed so as to include as a married woman living apart from her husband. In *King v. Inhabitants of Wymondham* (1841) 2 QB 541, a case which arose out of the Poor Law Statute I have referred to, 'single and unmarried' in an 'examination' was interpreted as 'never having been married,' the converse case. With regard to the context of the word in the present case the view taken by the Commissioner is expressed on the last page of the letter of reference as follows in the following manner:

The words in the definition constitute an inclusive list of all the nearer relatives; on marriage a daughter acquires a new relationship' and I see nothing in the definition of dependents to warrant a supposition that on the death of her husband she resumes the original relationship.

9. The comment which occurs to me is as follows: a daughter undoubtedly acquires a new relationship on marriage. She does not however lose the old relationship; she remains a daughter. Once a daughter always a daughter: qua relationship she is a daughter before, during and after marriage. On the other hand the legislature has attached a qualification or condition that in order to participate a female child must not only be a daughter, but she must be an 'unmarried' daughter. The question is what is the meaning of that qualification. Does it exclude

daughters once, but no longer, married? I think not. It appears to me that the important portion of the context to read in connexion with the definition is the operative part of Section 8 which provides for one payment to be distributed at a special time or period-the death of the employee-among particular persons. According to the English authorities and also I think in common conversation, when unmarried' forms a qualification in the description of a person who is to receive a sum of money at a definite time or period, the meaning 'not married' appears to be appropriate: see *Leshingham Trust* 24 Ch. D. 703 and *Jarman on Wills* in particular at p. 1252. For these reasons I agree with the decision in 13 Lah. 228 (1) and construe the expression 'unmarried daughter' in Section 2, 1(d) of the Act as including widowed daughter.

Rankin, C.J.

10. I agree and I would only add that, in my judgment, while it is quite true that the definition of dependency is made by the statute by a list of certain relatives, it is quite clear that in the case of a daughter the mere relationship to the workman was not regarded as itself a sufficient test. The statute has by speaking of 'unmarried daughter' introduced an element extraneous to the mere question of relationship to the workman and I think it is legitimate in considering the effect of the word 'unmarried' in such a case as that to consider it as a factor chosen by the legislature because in many cases at least it has a certain bearing upon the question of dependency in fact. I think, therefore, that there is no reason to dissent from the decision of the High Court of Lahore in *Moti Bai's case* AIR 1932 Lah 1; and, with all respect to the Commissioner who has put before us a very well-reasoned opinion, I am not prepared to depart from the principle laid down in that case. The applicant will have her costs before the Commissioner and before us from the employers. We assess the hearing fee in this Court at three gold mohurs.