

CIVIL REFERENCE.

Before Jai Lal J.

1931
 April 7.

MUSSAMMAT MOTI BAI, Petitioner,
versus
 THE AGENT, NORTH-WESTERN RAILWAY,
 Respondent.

Civil Reference No. 20 of 1930.

Workmen's Compensation Act, VIII of 1923, sections 2 (d) and 8 (I). "Dependent"—"unmarried sister"—whether includes widowed sister.

Held, that although ordinarily the expression "unmarried" implies a person who has never been married, the expression is susceptible of meaning "a sister whose husband is not alive at the time when the question arises," if the surrounding circumstances indicate that the word was intended to be used in the Statute in that sense.

Pratt v. Mathew, per Romilly M. R. (1), *Blundell v. De Falba* (2), and *Chant v. Lemon* (3), relied upon.

And, that the expression unmarried sister in the definition of "dependent" in section 2 (d) of the Workmen's Compensation Act, includes a widowed sister who has not remarried, it being immaterial whether she was or was not actually dependent upon the deceased.

Case referred by Mir Ghulam Yazdani, Senior Subordinate Judge, acting as Commissioner under the Workmen's Compensation Act at Multan, with his No. 638, dated the 12th June, 1930, for orders of the High Court.

OBEDULLAH, for Petitioner.

CARDEN-NOAD, Government Advocate, for Respondent.

(1) (1856) 111 R. R. 386. (2) (1888) 57 L. J. Ch. 576.
 (3) (1900) L. R. 2 Ch. D. 345.

JAI LAL J.—The Senior Subordinate Judge, Multan, acting as a commissioner under the Workmen's Compensation Act, 1923, has under section 27 of that Act, submitted for the decision of this Court the question "Whether the widowed sister who has not remarried and who is a dependent on the deceased should be classified among the dependents under this Act."

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The case relates to a claim to Rs. 750, fixed by the North-Western Railway as compensation for the dependents of Kesho Ram, a shunting porter on that railway, who met with an accident while on duty in the Bahawalnagar traffic yard and died on the same day. *Mussamat* Moti Bai, a widowed sister of the deceased, who, it has been found, lived with the deceased and was actually dependent upon him, has claimed the compensation.

I have heard the learned counsel for *Mussamat* Moti Bai and also the learned Government Advocate who appeared to assist the Court in deciding the question referred for its decision and ably and exhaustively discussed the case from all points of view. No authority of any Court in India, which might be of assistance in deciding the question, has been cited. The question has, therefore, to be answered mainly with reference to the definition of the word "dependent" as given in the Act.

"Dependent" has been defined to "mean any of the following relatives of a deceased workman, namely, a wife, husband, parent, minor son, unmarried daughter, married daughter who is a minor, minor brother, or unmarried sister and includes the minor children of the deceased son of the workman, and,

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where no parent of the workman is alive, the paternal grand-parent.”

The question, therefore, is whether an unmarried sister means a sister who has never been married, or whether it means a sister whose husband is not alive at the time when the question arises.

I have examined some English authorities on the subject and mainly those cited by the learned Government Advocate. They leave no doubt that ordinarily the expression unmarried is used in the first sense, that is to say, it implies a person who has never been married, at the same time the authorities lay down that the expression is susceptible of the second meaning as well, if the surrounding circumstances indicate that it was intended to be used in that sense. The following observation of Romilly M. R. in *Pratt v. Mathew* (1) supports this view:—

“It is obvious that the term ‘unmarried’ has a different signification, according as it is applied to a person who is married or unmarried at the time * * *. The word ‘unmarried’ therefore, does not necessarily mean ‘without having been married,’ and no fixed meaning can be assigned to it, but it must be determined according to the circumstances of the case.”

This opinion was affirmed on appeal by Knight Bruce and Turner L. JJ.

In *Blundell v. De Falba* (2), it was recognised that under certain circumstances the word “unmarried” may mean unmarried at the time or without having a husband at the time, rather than without ever having been married.

(1) (1856) 111 R. R. 386.

(2) (1888) 57 L. J. Ch. 576.

In re *Chant v. Lemon* (1), Cozens-Hardy J. remarked as follows:—

“ Now, it has been decided by authority which binds me that the word “unmarried” as applied to a man, primarily means, “without ever having been married,” *i.e.* a bachelor, but that although this is the primary meaning of the word, apart from its context, there is a secondary meaning which the word may bear, namely, “not having a wife,” *i.e.* being either a bachelor or a widower.”

It is thus clear that a widowed sister might come under the definition of ‘unmarried sister’ if that meaning was intended to be assigned to it in the definition of ‘dependent’ in the Workmen’s Compensation Act, 1923. No material assistance in deciding the question can be derived from the corresponding English Statute on the subject, because it appears that there, in addition to the specified relationships, the relations concerned must be actually dependent upon the deceased workman. That does not appear to be the case under the Indian Act. It may however be mentioned that a sister is one of the relations specified in the English Act and that it is not necessary that she should be ‘unmarried.’ Section 8 (1) of the Indian Act provides that compensation payable in respect of a workman whose injury has resulted in death shall be deposited with the commissioner, and any sum so deposited shall be apportioned among the dependents of the deceased workman or any of them in such proportions as the commissioner thinks fit, and may in the discretion of the commissioner, be allotted to any one such dependent, and the sum so

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allotted to any dependent shall be paid to him or, if he is at present under any legal disability, be invested, applied or otherwise dealt with, for his benefit during such disability in such a manner as the commissioner thinks fit.

Having regard to the definition of "dependent" at the commencement of the Act, it would seem that the actual dependence on the deceased workman is not the criterion for judging whether compensation should be paid to the persons mentioned in the definition or to any of them and that the mere proof of the specified relationship would entitle the person concerned to compensation. The intention of the Legislature appears to be to compensate those whom the deceased was, having regard to the customs and ideas of the people, ordinarily expected to maintain. There may be cases in which a relation, as for instance a wife, husband or parent, may have independent means of maintenance, but that circumstance, it seems to me, would not deprive them of the right to claim the compensation assessed for the death of the deceased workman. Again a wife or a husband is entitled to compensation in such cases and it does not appear that they would be deprived of this right on remarriage. That the definition of dependent was intended to be comprehensive with respect to the persons to be compensated also appears from the fact that a married daughter who is a minor is also mentioned in it. There is, therefore, good reason to hold that a widowed daughter or a widowed sister were also intended to be compensated.

Having regard to these considerations, I am of opinion that the view of the commissioner that a

widowed sister who has not remarried does fall within the definition of dependent in the Workmen's Compensation Act; I hold accordingly. There will be no order as to the costs of this reference. Let the records be returned to the learned commissioner.

N. F. E.

*Reference answered
in the affirmative.*

LETTERS PATENT APPEAL.

Before Shadi Lal C. J. and Broadway J.

LACHMI NARAIN GADODIA, Appellant

versus

RAGHUBAR DIYAL, Respondent.

Letters Patent Appeal No. 99 of 1928.

Indian Succession Act, XXXIX of 1925, sections 229, 230. Renunciation by executor—mode of—Doctrine of—whether limited to cases of letters of administration with will annexed. Renunciation—whether can be retracted.

One R.K. died in December 1924, leaving a widow and three minor children. In his will he had appointed four persons including L.N.G. the appellant and R.D. the respondent, his executors. None of them applied for Probate during the widow's life time and in January 1926 the lady applied to be appointed guardian of the persons and property of her minor children. In these proceedings the appellant appeared in Court and declared that he did not wish to perform the duties of an executor and his statement was recorded by the Court and signed by him. The widow died in October 1926, and on the 4th November 1926 the respondent R.D. applied for grant of Probate, the appellant, though cited, did not appear and Probate was granted to R.D. On 10th May 1927 the appellant applied for Probate to himself to which the re-

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