addressees. In a case where the addressee makes a statement on oath that such a letter was not tendered to him, the presumption stands rebutted."

In the light of the aforesaid discussion the Tribunal's findings on issue No. 4 (and consequently on issue No. 5) are unsustainable in law and are hereby set aside.

15. This writ petition is hereby allowed and the impugned award of the Industrial Tribunal, annexure P. 1, is set aside. Inevitably in view of the finding on issue No. 3 above (Para 10) the reference of the industrial dispute by the Government to the Tribunal has also to be necessarily quashed. Because of the legal issues involved, we do not burden the respondent-workman with costs.

N. K. S.

Before S. S. Sodhi, J.

NIRMAL BHUTANI AND OTHERS,—*Appellants.*

versus

HARYANA STATE AND ANOTHER,—*Respondents.*

First Appeal from order No. 200 of 1976.

August 31, 1982.

Motor Vehicles Act (IV of 1939)—Sections 2(18), 81 and 110-A—Road-roller parked on the road without any sign or indication—Motor car dashing against the road-roller resulting in the death of an occupant—Claim for compensation made under section 110-A—Road-roller—Whether a 'Motor vehicle' and the claim maintainable—Onus to prove that the accident could be avoided by the car driver—Whether on the party seeking to avoid liability arising from the accident.

Held, that the term 'motor vehicle' has been defined by section 2(18) of the Motor Vehicles Act, 1939 as any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer, but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises. The words 'enclosed premises' have not been defined in the Act. In the absence of such definition, we may adopt the dictionary meaning of the said expression which means 'to surround (with walls, fences, or other barriers) so as to prevent

free ingress or egress'. In dealing with the case of road-rollers it is to be borne in mind that a road-roller of its own steam moves from one place of work to another and this is an important aspect of the matter because if a vehicle is fit and suitable for being used on a road it is immaterial whether it runs on a private road or on a public road unless it is shown that it is of a special type adapted for use only in factories or enclosed premises and incapable of running on any other type of roads or public roads. A road-roller is clearly not such a vehicle which can be said to be incapable of running on roads public or private. The mere placing of drums to cordon off a certain portion of the road for tarring and the working of the road-roller thereon cannot, thus, bring this portion within the ambit and meaning of the expression 'enclosed premises'. A reference to the other provisions of the Act leaves no manner of doubt that a road-roller is included within the definition of 'motor vehicle' as given in the said Act. There is a presumption, rebuttable no doubt, that where a word is repeated in the same enactment it bears the same meaning whenever it is used therein unless the context makes it clear that the word must have a different construction. There is, thus, no escape from the conclusion that a road-roller is a 'motor vehicle' as defined in the Act and, consequently, an application under Section 110-A of the Act is competent arising from an accident with a road-roller.

(Paras 7, 9, 10, 11 and 12).

Held, that where a motor vehicle is left parked on a highway in such a manner that it constitutes a hazard or danger to road users, the onus must be held to be upon one who seeks to avoid liability arising from an accident with such vehicle, to establish that despite such parking of the motor vehicle, the accident took place due to the fault or negligence of the other party or that such other party could have avoided the accident by reasonable care and caution.

(Para 16).

First Appeal from Order of the Court of Shri Ved Parkash Aggarwal, Motor Accident Claims Tribunal, Hissar, dated 8th April, 1976, allowing the total claim in sum of Rs. 1,05,000 in favour of the petitioners to be recovered from both the respondents jointly and severally and the share of petitioners shall be one-third each and no deductions for lump sum have been granted as ordered not to grant any interest on the amount of compensation granted and otherwise also, the petitioners were entitled to much-more than what has been granted.

L. M. Suri, Advocate, *for the Appellant.*

Harbhagwan Singh, A. G. Haryana, *for the Respondents.*

JUDGMENT

. *Sodhi, J.*

1. This judgment will dispose of the appeal referred to above as also the cross appeal F.A.O. No. 207/1976 (State of Haryana *v.* Shmt. Nirmal Bhutani & others).

2. Sometime during the night intervening September 26 and 27, 1972, a Fiat Car No. DHA 5651 ran into a road roller which was parked on the Fatehabad-Hissar road resulting in the death of both the occupants of the said car. One of the persons killed in this accident being Ish Kumar Bhutani, the owner and the driver of the said car.

3. Shmt. Nirmal Bhutani, the widow of Ish Kumar Bhutani deceased, and their two minor daughters Sanjana Bhutani and Tanesha Bhutani filed an application under section 110-A of the Motor Vehicles Act seeking Rs. 3 lacs as compensation for the loss suffered by them on account of the death of Ish Kumar Bhutani in this accident.

4. The Tribunal came to the finding that the accident in this case was attributable to the negligent act of the driver of the road-roller in leaving it unattended on the road without any sign or indication to warn road users of it being there. A sum of Rs. 1,05,000 was, consequently, awarded as compensation to the claimants.

5. The claimants in their appeal sought enhanced compensation while on behalf of the State of Haryana, liability in this case was sought to be denied on a number of grounds.

6. Mr. Harbhagwan Singh, Advocate-General, Haryana sought to contend at the very outset that a road-roller did not fall within the definition of 'motor vehicle' under the Motor Vehicles Act, 1939 and consequently no application lay under section 110-A of the said Act for compensation arising out of the accident in the present case.

7. 'Motor Vehicle' has been defined by section 2(18) of the Motor Vehicles Act, 1939, as "any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and

includes a chassis to which a body has not been attached and a trailer, but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises."

8. It was the argument of the learned Advocate-General that a road-roller could not be said to fall within the definition set out above as it was a vehicle of a special type adapted for use in enclosed premises. He referred in this behalf to the testimony of RW-2 Shri A. C. Gupta, Assistant Engineer, who deposed that when any portion of the road is to be tarred, that portion is enclosed by empty drums. The learned Advocate-General sought to contend that as the sphere of operations of a road-roller was always within an enclosed area it answered to the description of a vehicle of "a special type" adapted for use in "enclosed premises".

9. The expression "enclosed premises" occurring in section 21(18) of the Motor Vehicles Act came up for consideration in *Messrs. Bolani Ores Ltd.* v. *State of Orissa* (1). It was observed :

> " 'Enclosed premises' has not been defined in the Act. In the absence of such definition, we may adopt the dictionary meaning of the said expression. In the Oxford English Dictionary, Vol. III, the meaning of the word 'enclose' has been given as "To surround (with walls, fences, or other barriers) so as to prevent free ingress or egress".

This was, thus, what the expression "enclosed premises" was taken to mean.

10. In dealing with the case of road-rollers it is to be borne in mind that a road roller of its own steam moves from one place of work to another. This is an important aspect of the matter as it was also held in *Bolani Ores Ltd's case* (supra) that if a vehicle is fit and suitable for being used on a road it is immaterial whether it runs on a private road or on a public road unless it is shown that it is of a special type adapted for use only in factories or enclosed premises and incapable of running on any other type of roads or public roads. A road roller is clearly not such a vehicle which can

(1) AIR 1968 Orissa 1.

be said to be incapable of running on roads, public or private. The mere placing of drums to cordon off a certain portion of the road for tarring and the working of the road roller thereon cannot, thus, bring this portion within the ambit and meaning of the expression "enclosed premises".

11. A reference to the other provisions of the Motor Vehicles Act, 1939, leaves no manner of doubt that a road-roller is included within the definition of "motor vehicle" as given in the said Act. To illustrate, section 8(2) in specifying motor vehicles which the holder of a driving licence may be entitled to drive, lists road-roller as one such vehicle. There is then Form A of the first schedule of the Motor Vehicles Act which sets out the form of an application for licence to drive a motor vehicle this includes road-rollers as one of the motor vehicles in respect of which a licence can be applied for.

12. There is a presumption, rebuttable no doubt, that where a word is repeated in the same enactment it bears the same meaning whenever it is used therein unless the context makes it clear that the word must have a different construction. This is based upon the statement in Maxwell on the Interpretation of Statutes :

> "It is at all events reasonable to presume that the same meaning is employed by the use of the same expression in every part of an Act."

There is, thus, no escape from the conclusion that a road-roller is a "motor vehicle" as defined in the Motor Vehicles Act and, consequently, an application under section 110-A of the Motor Vehicles Act is competent arising from an accident with a road-roller.

13. The learned Advocate-General next sought to challenge the award of the Tribunal on the ground that the plea of limitation raised against the claimants was adjudicated upon by the Tribunal without any issue having been framed with regard thereto. This is a contention devoid of merit. The learned Advocate-General failed to show what prejudice, if any, had been caused by no issue having been framed with regard to this matter. The record of the case shows that at no stage was any request made for the framing of an issue on the point of limitation. Full opportunity was granted to and availed of by both the parties in adducing evidence in this case. In the circumstances, this plea cannot be allowed to be raised for

the first time in appeal and must, consequently, be negatived. In this behalf it is noteworthy that on merits, the condonation of the delay by the Tribunal was not in any manner assailed.

14. Next, another technical objection was sought to be raised, this time with regard to issue No. 1 which reads as under :—

> "Whether the accident was caused due to the negligent driving of road roller No. 61 of the PWD (B & R) Haryana Government which had been parked in the middle of the road ?"

The learned Advocate-General sought to find fault with the frame of this issue by seeking to contend that the wording of the issue was such that it pre-supposed that the road-roller had been parked in the middle of the road whereas this was a question which fell to be decided after adjudication. Here again it will be seen that it was for the first time in appeal that such an objection has been raised. The issues here were framed in the presence of both the parties and thereafter both parties led evidence. At no stage was any objection raised before the Tribunal with regard to the frame of the issue. It would also be pertinent here to advert to the written statement filed by the driver where it was admitted that the road-roller was standing in the road. This, thus, is no ground to question the order of the tribunal.

15. Turning now to the finding of the tribunal with regard to negligence, the learned Advocate-General was at pains to stress the point that even with the road-roller being parked on the road there was ample space available for the car to go past it without colliding with it and unless it could be shown that the driver of the motor vehicle was prevented from doing so, collision with the road-roller must be held to be on account of his own negligence and not that of the driver of the road-roller.

16. There is a basic fallacy in the argument of the learned Advocate-General. Where a motor vehicle is left parked on a highway in such a manner that it constitutes a hazard or danger to road users, the onus must be held to be upon one who seeks to avoid liability arising from an accident with such vehicle, to establish that despite such parking of the motor vehicle, the accident took

place due to a fault or negligence of the other party or that such other party could have avoided the accident by reasonable care and caution. No such evidence or circumstances exist in the present case.

17. There is no eye-witness to the actual incident in the present case. All the eye-witnesses examined in this case, both on behalf of the claimants as also on behalf of the respondents, with regard to the accident are those who came to the place of incident in the morning, i.e., after the accident.

18. Further, persons travelling on a highway are entitled to proceed at a fast speed thereon unless there is some traffic or other obstruction on the road to slow it down. It has come in evidence here and it is not disputed, that the road-roller was parked on the road without any sign or indication with regard to its standing there. Further, the place where it was standing was a particularly dark area being near trees and branches. The only means by which it could, thus, become visible to a car driver was when the headlights of the car happened to fall upon it. If it be assumed that the car was travelling at a speed of, say 60 kms. (or 40 miles) per hour, which the driver would be fully justified in driving at, considering it was a main highway and the road was clear, the distance available to the car driver to stop the car or to avoid the road-roller must clearly be taken to be inadequate for either purpose. As is well known there is a certain amount of time taken in thinking of the appropriate action to be taken when a sudden danger emerges and then there is the actual braking distance of the motor vehicle concerned. In a situation as is likely to have arisen in this case there can be no escape from the conclusion that the road-roller standing on the road in such a manner was a grave and unexpected hazard for road users and it constituted a breach of a duty of care which was owed by the driver of the road-roller to other road users. There is also here a breach of the provisions of section 81 of the Motor Vehicles Act which are reproduced hereunder :—

"81. *Leaving Vehicle in dangerous position.*

No person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to remain at rest on any road in such

a position or in such a condition or in such circumstances as to cause or be likely to cause danger, obstruction or undue inconvenience to other users of the road."

19. According to the highway code published by the United Kingdom Government, a motor vehicle travelling in good weather at a speed of 40 miles per hour would require a thinking distance of 40 feet and a braking distance of 30 feet to bring it to a halt; in other words the overall stopping distance would be 120 feet. The head-lights of our cars cover a distance much shorter than this. This overall distance is likely to be more, in particularly dark areas like the one as described in the present case. It would be relevant here to notice a similar case which came up before the High Court of Delhi in *Pushpa Rani Chopra* v. *Anokha Singh* (2), where a motor cyclist dashed against a stationary truck parked on the road. It was observed that the truck parked in such a manner was bound to cause danger and obstruction to other road users and it was further held that there was no contributory negligence on the part of the deceased motor cyclist in striking against the truck so parked.

20. A half-hearted attempt was made to contend that Ish Kumar deceased was under the influence of liquor at the time of accident and the main reliance in this behalf was sought to be placed upon the testimony of RW-4 Shankar Lal who deposed that he had been working as a Munshi with the deceased for five to six years. It was his testimony that Ish Kumar used to take liquor every morning and evening and even on the day of accident 1½ bottles of whisky had been purchased and consumed by the deceased and his two companions which included this witness. The testimony of this witness cannot stand scrutiny and was, thus, rightly not relied upon. It appears that Shankar Lal came forth to depose against the claimants, being a disgruntled employee of the deceased, as he stated that fifteen days' pay was due to him from the deceased. He admitted that he himself took liquor every day and what is significant is his statement that he had never spoken to anyone that the deceased used to drink or had taken liquor on the day of the accident. Clearly, therefore, no reliance can be placed upon the testimony of such a witness. In this behalf it is significant to note that according to Shmt. Nirmal Bhutani, her husband Ish Kumar

(2) 1975 A.C.J. 396.

deceased never took liquor. This statement was not in any manner challenged.

21. A reference was also made to the testimony of RW-3 Shri Ganpat Rai, Manager of the Hissar Club, but the Advocate-General failed to show how his testimony could in any manner be read to show that the deceased took liquor as Shri Ganpat Rai deposed that no liquor was ever sold in the club as the club had no liquor licence nor could anyone bring liquor to the club and drink it there. Some evidence was also sought to be brought in on behalf of the respondents that there was an empty bottle of whisky found near the place of accident but it finds no corroboration from the testimony of the investigating officer who, on the other hand, was quite clear that no liquor bottle, either full or empty, was found in the car.

22. The Tribunal was, thus, correct and fully justified in holding that this accident was caused due to the negligence of the driver of the road roller in leaving it parked unmarked on the main highway.

23. Turning now to the amount awarded as compensation in this case it will be seen that Ish Kumar deceased was 34 years of age at the time of his death. He died leaving behind his widow aged 30 years and two minor daughters, one aged nine and the other four years old. According to the claimants Shmt. Nirmal Bhutani who appeared in the witness-box as AW-7, Ish Kumar Bhutani was a Government contractor and his income be Rs. 5,000 to 6,000 per month. They had a house of their own in Model Town, Hissar and he owned a car and a scooter and they had also employed a male servant, a maid and an Aya. Rs. 3,000 to 4,000 per month used to be given to her by her husband for the household expenses. Her statement regarding the income of her husband or the amount that was paid to her every month was not challenged in cross-examination. AW-4 Hem Raj, the elder brother of Ish Kumar deceased, corroborated Shmt. Nirmal Bhutani by deposing that the income of the deceased was Rs. 6,000 per month. A similar statement was made by Lok Nath, father of the deceased who stated that the income of the deceased was Rs. 60,000 to 65,000 per annum.

24. There is also on record the income-tax assessment order Ex. P-2 for the year 1971-72 showing the income of the deceased to be Rs. 78,900 and Ex. P-1 showing an income of Rs. 50,220 for the

period 1st April, 1972 to 26th September, 1972. Further it is on record that about Rs. 24,000 was paid as income tax each year for the last four years. The Tribunal took the net income of the deceased to be Rs. 3,000 per month and after making an allowance for the amount which the deceased must have been spending upon himself took the loss suffered by the claimants to be Rs. 2,000 per month and it was on this basis that the amount awarded as compensation was computed.

25. Counsel for the claimants contended that though the income of the deceased from the evidence on record was clearly more than Rs. 3,000 per month, even if it be taken that the loss suffered by the claimants on account of the death of the deceased was @ Rs. 2,000 per month they were clearly entitled to compensation to the extent to which it had been claimed namely Rs. 3 lacs. He stressed in this behalf also the young age of the deceased and of the claimants.

26. It is now well settled, as was laid down in *Lachhman Singh* v. *Gurmit Kaur* (3) that the compensation to be assessed is the pecuniary loss caused to the dependents by the death of the person concerned and for the purpose of calculating the just compensation, annual dependency of the dependents should be determined in terms of the annual loss accruing to them due to the abrupt termination of life. For this purpose, annual earnings of the deceased at the time of the accident and the amount out of the same which he was spending for the maintenance of the dependants will be the determining factor. This basic figure will then have to be multiplied by a suitable multiplier. The suitable multiplier shall be determined by taking into consideration the number of years of the dependency of the various dependents, the number of years by which the life of the deceased was cut short and the various imponderable factors, such as early natural death of the deceased, his becoming incapable of supporting the dependents due to illness or any other natural handicap or calamity, the prospects of remarriage of the widow, the coming up of age of the dependents and their developing independent sources of income as well as the pecuniary benefits which might accrue to the dependents on account of the death of the person concerned.

(3) 1979 P.L.R. 1.

27. A Division Bench of our High Court in *Asha Rani* v. *Union of India* (4) held that the normal multiplier should be sixteen in such cases. It was so held after taking note of Lachhman Singh's case (supra).

28. Keeping in view the principles set out in the Full Bench decision referred to above and having regard generally to the circumstances of this case, it would be fair and just to hold that the loss suffered by the claimants on account of the death of the deceased was to the extent of Rs. 2,000 per month and the suitable multiplier should obviously be sixteen. Computed on this basis the claimants must be held entitled to Rs. 3,84,000 (2,000×12×16) as compensation. The amount claimed in this case was only Rs. 3 lacs. Thus, no award can be made in excess thereof. The amount awarded to the claimants is consequently enhanced to Rs. 3 lacs. The claimants shall, in addition, be entitled to 10% interest per annum thereon from the date of the application to the date of payment thereof. In the result, the appeal filed by the claimants, i.e. F.A.O. 200/1976 is hereby accepted with costs; counsel fee Rs. 500, while that filed by the State of Haryana is dismissed. There will be no order as to costs in that appeal.

N.K.S.

Before G. C. Mital, J.

DARSHAN KAUR,—*Appellant.*

versus

MALOOK SINGH,—*Respondent.*

First Appeal from Order No. 11-M of 1981.

August 31, 1982.

Hindu Marriage Act (XXV of 1955)—Sections 19 and 25—Marriage solemnized within the jurisdiction of the Court at Jullundur and the parties residing there—Decree for divorce granted by a Court in Allahabad—Application for permanent alimony made to a Court at Jullundur—Court at Jullundur—Whether competent to grant the relief.

(4) 1982 P.L.R. 486.