It seems to be thus manifest that the finding of the trial Court that the earlier decree for restitution of conjugal rights was collusive and consequently a nullity is unsustainable and has to be set aside.

14. In the result this appeal is allowed and the judgment of the trial Court is set aside. A decree of divorce under section 13 of the Hindu Marriage Act, 1955, is granted in favour of the appellant. There will be no order as to costs.

S. P. Goyal, J.—I agree.

N. K. S.

Before S. S. Sandhawalia, C.J. & I. S. Tiwana, J.

M/S ESCORTS LIMITED, FARIDABAD,—*Petitioner.*

versus

INDUSTRIAL TRIBUNAL, HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 5653 of 1981.

August 30, 1982.

Industrial Disputes Act (XIV of 1947)—Sections 10(1) and 12(5)—Industrial Employment (Standing Orders) Act (XIV of 1946)—Section 5—Industrial dispute raised by a workman—Government declining to refer the same for adjudication—Same dispute referred by the Government thereafter—Employer—Whether has a right to be heard when the reference is made—Rule of audi alteram partem*—Whether attracted—Absence without leave for ten consecutive days deemed to be voluntary abandonment under the Standing Orders—'ten consecutive days'—Meaning of—Application for leave sent under certificate of posting when the Standing Orders required it to be sent by registered post—Such application—Whether of any consequence.*

Held, that though Section 10(1) of the Industrial Disputes Act, 1947 does not in terms prescribe for recording of reasons before rejecting a claim for reference with regard to an industrial dispute, yet it is now the settled law that an order of this nature must indicate the reasons for declining the reference. Though no detailed speaking order is necessary in this context yet it is

well established that a total absence of any reason for rejecting the reference may vitiate the same. From a reading of section 10(1) it would follow that the earlier rejection of a claim to a reference of an industrial dispute has to be for indicated and recorded reasons. Even though the exercise of the power here and the order passed may be termed as essentially administrative it nevertheless requires a clear application of mind and an indication of the reasons for the decision. Therefore, without holding that such an order would give any perpetual vested right to either one of the parties affected thereby, it nevertheless seems to follow that at a lower level it does clothe one or the other of the parties with some legal interest therein (and consequently civil consequences therefrom) which may well attract atleast a right of hearing before such an administrative order is reviewed and the earlier rejection is recalled. Section 12(5) in terms provides that where the appropriate Government does not make a reference on a consideration of the report submitted by the Conciliation Officer, it shall record and communicate to the parties concerned its reasons therefor. It is thus plain that a refusal to make a reference where conciliation proceedings have been initiated is required by statute to both clearly record reasons and to communicate that to the parties. It seems axiomatic that where even an administrative order requires this, it would be a factor in favour of the rights of the parties to be heard before such a considered order is reversed so as to enable them to bring before the authority all the considerations for supporting or reversing the same. It is true that the earlier rejection does not give any vested right to the employer to have the issue finally closed and no considerations of *res-judicata* can possibly arise in this situation, but nevertheless in view of adverse consequence that may well ensue by referring a dispute which has earlier been rejected, the employer would be entitled to be heard before it is re-opened. Thus, it is held that the rule of *audi alteram partem* is attracted to the exercise of the power a second time under section 10(1) of the Act whilst referring the matter for adjudication after the same had been rejected earlier.

(Paras 5, 6, 7 and 10).

Held, that the words 'ten consecutive days' cannot be construed to mean 'ten consecutive working days'. This would appear to be plainly against the elementary cannons of construction for one cannot inject or introduce words into a provision which are not there. This apart, there is no rationale for introducing this element in the Standing Orders. Such a view carried to its logical abstruse length would mean that there cannot in this context be ever an absence of ten consecutive working days where a weekly holiday or holidays intervene. If any holiday or holidays intervening in the unauthorised absence are to be excluded from consideration there would invariably be a statutory holiday in the week which will give a fresh terminus for counting the next

working days and so on. But this apart, it seems obvious from a reading of the Standing Orders that the intent of the provisions is that unauthorised absence for a continued spell of ten days entitles the employer to terminate the services and will be deemed to be a case of voluntary abandonment of service by the workman. To hold that because a holiday or a number of holidays intervene, an unauthorised absence before or after the same should be condoned by taking them as extenuating circumstance does not appear to be tenable. It is, therefore, held that because of its language and the intent of the Standing Orders, the 'ten consecutive days' therein means strictly so without introducing the hiatus of the theory of working days or holidays therein.

(Para 12).

Held, that the mere forwarding of an application for extension of leave under certificate of posting is of no consequence in face of the clear mandate in Standing Order 36(vii) requiring such an application to be forwarded to the employer by registered post.

(Para 13).

Petition Under Articles 226/227 *of the Constitution of India praying that*:—

(*i*) *a writ in the nature of certiorari quashing the Award of Respondent No.* 1, *dated 3rd of July*, 1981 *published in the Haryana Government Gazette (Part-I), Annexure P-9, dated 3rd of November*, 1981, *pages* 2390—2394, *be issued;*

(*ii*) *any other writ, order or direction as this Hon'ble Court may deem fit and proper, under the circumstances of the case, be issued;*

(*iii*) *the record of the case be ordered to be sent for;*

(*iv*) *the cost of the petition be awarded to the petitioner;*

It is further prayed that the condition of attaching original/certified copies of the annexures, as required under High Court Rules and Orders, be dispensed with;

It is further prayed that during the pendency of the writ petition the operation of the impugned Award and the reinstatement of the respondent workman, be stayed.

Kuldip Singh, Advocate with S. S. Nijjar, Advocate, *for the Petitioner.*

R. N. Rai, *recognised agent of Respondent No.* 2.

JUDGMENT

S. S. Sandhawalia, C.J.

(1) Whether the rule of *audi alteram partem* is attracted to the exercise of the power a second time under section 10(1) of the Industrial Disputes Act while referring the matter for adjudication after the same had been rejected earlier is the meaningful question arising in this writ petition. Equally significant is the issue of the construction to be placed on the certified Standing Order No. 37.

(2) Messrs Escorts Ltd., a public limited company amongst other business activities is engaged in the manufacture of tractors and engineering goods employing 2,600 persons in its plant No. 1. Respondent No. 2 Surjit Singh was employed as a workman in the aforesaid plant and the petitioner-company avers that respondent No. 2 applied for leave from the 23rd of November to the 27th of November, 1975, and thereafter without notice failed to attend to his duties and remained absent. On the 2nd of December, 1975, the respondent was informed by a registered letter that he should report for duty within three days of the receipt thereof failing which it would be presumed that he was no longer interested to serve the petitioner. According to the petitioner no reply was received even to the said communication and in view of certified Standing Order No. 37 the respondent-workman would be deemed to have voluntarily abandoned the service of the petitioner. On the 9th of December, 1975 the name of respondent No. 2 was removed from the roll of the workers and he thereafter submitted a demand before the Conciliation Officer but as no settlement could be arrived at, a report was sent to the Government of Haryana. On consideration of the same and all other relevant factors the Haryana Government formed the opinion that the demand of the respondent-workman was not fit to be referred for industrial adjudication and both the respondent workman and the petitioner were duly informed about the said decision,—*vide* letter, dated the 24th of February, 1976. It is the petitioner's case that thereafter the respondent-workman remained wholly silent for a period of more than two years. Again on a fresh representation by respondent No. 2 on the identical facts and cause of action, the respondent-State of Haryana,—*vide* Annexure P. 1, dated the 25th of July, 1978, referred the alleged dispute for adjudication by the Industrial Tribunal, Faridabad. On the pleadings of the parties

before it the Tribunal framed five issues of which the relevant ones which fall for consideration are as under:—

ISSUES :

(1) * * * *.

(2) * * * *.

(3) Whether the reference is bad for the reason that the Government did not give opportunity to the management of hearing before referring the dispute after previously rejected ?

(4) Whether the workman left the services of the Company without notice under certified Standing Orders of the management ?

(5) If issue No. 4 is not proved, whether the termination of services of the workman was justified and in order? If not, to what relief is he entitled ?

Issue No. 3 was summarily decided against the petitioner-management on the alleged ground that it was concluded against them by the decision in *M/s. Avon Service Production Agencies (P) Ltd.* v. *Industrial Tribunal, Haryana and others*, (1). On issue No. 4 the Tribunal in construing the certified Standing Order No. 37 took the view that the period of 10 consecutive days prescribed therein to constitute a voluntary abandonment of service meant in essence 10 consecutive working days. It also opined that because the respondent-workman was alleged to have sent an application for extension of leave by a letter under a 'certificate of posting' the same must be presumed to have been extended. On these premises, issue No. 4 was decided against the petitioner-management and as a necessary consequence the findings on issue No. 5 followed suit. The respondent-workman was directed to be reinstated with continuity of service but with 75 per cent of the back wages.

3. The main thrust of the argument projected on behalf of the writ-petitioner is on the firm basis of the violation of the principles of natural justice. It was forcefully contended on their behalf by Mr. Kuldip Singh that the earlier claim to a reference having been declined by the Government on the 24th of February, 1976 (after conciliation proceedings, to which the petitioners and respondent No. 2

(1) A.I.R. 1979 S.C. 170.

were parties), the said order could not be reversed without affording an opportunity of hearing to the petitioners as it entails serious adverse civil consequences to them. Both on the language of the statutory provisions as also on precedent it was submitted that the rule of *audi alteram partem* would be squarely attracted in this context.

4. At the very outset it should be noticed that the aforesaid issue has not to be considered within the parameters of the binding precedents of the final Court cultiminating in *M/s. Avon Service Production Agencies' case* (supra). This judgment categorically lays down that the power of the appropriate Government to make a reference under section 10(1) of the Industrial Disputes Act (hereinafter called the Act) can be exercised a second time or thereafter and is in no way exhausted by an earlier refusal to make such a reference on the same set of facts. Equally the observations in this case would leave no manner of doubt that the exercise of the power of reference herein is administrative in character resting on the formation of opinion by the authority which is essentially subjective in its nature. These factors, however, are no longer decisive because the distinction betwixt the quasi-judicial and administrative exercise of power has grown paper-thin if not completely eroded in so far as the application of principles of natural justice is concerned. Even proceeding on the basic assumption that the exercise of the power herein is administrative in character the question would still remain whether the rejection of an earlier application for the reference of a dispute by the workman would give some vestige of right to the employer entitling him to be heard before the earlier order is recalled and reversed. In essence the issue boils down to the somewhat subtle question whether grave or adverse civil consequences ensue to the employer by a fresh reference on the same set of facts even though earlier he may have been able to establish that no industrial dispute was made out or it was inexpedient to do so and consequently secured its rejection.

5. Now apart from principle, the matter herein has inevitably to be examined in the context of the statutory provisions as well. It is, therefore, apt to read at the outset the relevant parts of sections 10 and 12 of the Act:—

"S. 10 *Reference of disputes to Boards, Courts or Tribunals.*—

(1) Where the appropriate Government is of opinion that

any industrial dispute exists or is apprehended, it may a any time by order in writing—

(a) * * *

(b) * * *

(c) refer the dispute or any matter appearing to be connected with or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication;

Provided : * * * *

S. 12. *Duties of Conciliation Officers.*—(1) Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under Section 22 has been given, shall hold conciliation proceedings in the prescribed manner:

(2) * * * *

(3) * * * *

(4) * * * *

(5) If, on a consideration of the report referred to in subsection (4), the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal, it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor."

Though section 10(1) does not in terms prescribe for recording of reasons before rejecting a claim for reference with regard to an industrial dispute, yet it is now the settled law by the final Court that an order of this nature must indicate the reasons for declining the reference. Though no detailed speaking order is necessary in

this context yet it is well established that a total absence of any reason for rejecting the reference may vitiate the same. Therefore, reading section 10(1) along with its authoritative construction it would follow that the earlier rejection of a claim to a reference of an industrial dispute has to be for indicated and recorded reasons. Even though the exercise of the power here and the order passed may be termed as essentially administrative it nevertheless requires a clear application of mind and an indication of the reasons for the decision. Therefore, without holding that such an order would give any perpetual vested right to either one of the parties affected thereby, it nevertheless seems to follow that at a lower level it does clothe one or the other of the parties with some legal interest therein (and consequently civil consequences therefrom) which may well attract at least a right of hearing before such an administrative order is reviewed and the earlier rejection is recalled.

6. Again Section 12 of the Act would make it manifest that a claim for the reference of an industrial dispute for adjudication is one in which the two main contenders therein, namely, the workman and the employer are active participants. Though conciliation proceedings are not obligatory in every industrial dispute yet they are so where it relates to a public utility service and a notice under section 22 has been given. Equally it was not disputed before us that though in other industrial disputes the initiation of conciliation proceedings is discretionary yet in the usual and indeed the normal course a resort to conciliation proceedings in the first instance is often made. Once conciliation proceedings are initiated, there is hardly any manner of doubt that both the workman and the employer are inextrieably associated therewith. The Conciliation Officer is obliged to investigate the dispute and take all possible steps for an amicable settlement thereof. In case of a failure to arrive at a settlement, sub-section (4) of section 12 mandates a full report by the Conciliation Officer to the appropriate Government with the requisite data. On a consideration of this report the appropriate Government may make a reference of the dispute. However, what is significant is that Section 12(5) in terms provides that where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor. It is thus plain that a refusal to make a reference where conciliation proceedings have been initiated is required by statute to both

clearly record its reasons and to communicate that to the parties. It seems axiomatic that where even an administrative order requires this it would be a factor in favour of the right of the parties to be heard before such a considered order is reversed so as to enable them to bring before the authority all the considerations for supporting or reversing the same.

7. Lastly in this context it seems difficult to hold that reviewing and recalling the earlier order rejecting a reference in favour of the employer would not entail grave penal and civil consequences to him. It is true that the earlier rejection does not give any vested right to the employer to have the issue finally closed and no considerations of res-judicata can possibly arise in this situation. Nevertheless in view of adverse consequences that may well ensue by referring a dispute which has been earlier rejected, the employer would be entitled to be heard before it is reopened. Learned counsel for the petitioners has highlighted the adverse civil consequences which may well ensue in making a reference culminating in the reinstatement of the terminated workers. It was plausibly submitted that a big employer (like the present writ-petitioner) who may have terminated the services of a large number of workers, whose claim to a reference is rejected, may well set his house in order on the assumption that their termination has been validly upheld. On that basis he may well close down a particular production Department. A reopening of the issue and a fresh reference of the same industrial dispute much later may culminate in the reinstatement of workers to a Department which had been closed down on the assumption of their valid termination and this might involve on unbearable financial burden, apart from other considerations. It was argued and we believe rightly that the whole gamut of the industrial relation betwixt the employer and the workers would remain in a continuous flux if despite an earlier rejection for a reference of an industrial dispute it can be reopened with impunity either independently or at the behest of the workmen without any notice and entirely behind the back of the employer. Relying on the observations and the ratio in *Mohinder Singh Gill.* v. *Chief Election Commissioner* (2) and *Smt. Maneka Gandhi* v. *Union of India,* (3), learned counsel for the petitioners forcefully contended that by no stretch of

(2) A.I.R. 1978 S.C. 851.

(3) A.I.R. 1978 S.C. 597.

imagination can it be said that no civil consequences whatsoever ensue to the employer in not only re-opening a rejected claim but referring it afresh for adjudication. We are of the opinion that in view of the recent trend of authority in the final Court it has to be held that in this context that grave and some times penal civil consequences may well ensue and once that is so the principle of natural justice would inevitably be attracted.

8. Judicial precedent also seems to have tilted heavily in favour of the view that in making a reference afresh for an industrial dispute after the same having been rejected earlier would attract the principles of natural justice in favour of the employer. It would seem that the view has been consistently taken in the Madras High Court for well nigh 12 years culminating in its Full Bench decision in *G. Muthukrishnan* v. *The Administrative Manager, New Horizon Sugar Mills Private Ltd., Pondicherry and others* (4). In Karnataka an earlier dissent has been set at rest by the well considered judgment of the Division Bench in *Indian Telephone Industries Ltd.* v. *State of Karnataka and others* (5), holding that a fresh reference in this context entails civil consequences to the employer and the failure to hear him renders the reference illegal and unjust. The aforesaid view has been followed in the Calcutta High Court in *American Express International Banking Corporation* v. *Union of India and others* (6).

9. Undoubtedly discordant notes in this context have been struck in other High Courts. On behalf of the respondents reliance was placed on the judgment of the Rajasthan High Court in *Goodyear (India) Ltd., Jaipur* v. *Industrial Tribunal, Rajasthan* (7). A close perusal of this judgment would indicate that the learned Judges arrived at their conclusion primarily on the basis of some observations in the earlier Supreme Court judgments. What calls for pointed notice herein is that these observations pertained to the first or the original reference of a dispute under section 10(1) of the Act. That different considerations apply where the original reference has been rejected and a second reference is sought to be made afresh is

(4) (1980) 1 S.L.R. 805.
(5) (1978) L.L.J. 544.
(6) (1979) 2 L.L.J. 22.
(7) (1968) 2 L.L.J. 682.

manifest from the earlier discussion. The Good-year's case (supra) had come up for express notice by the Division Bench in *Indian Telephones Industries' case* (supra) and for detailed reasons recorded therein it was dissented from. It is unnecessary to traverse the same ground over again and it would suffice to highlight that the Rajasthan judgment was rendered prior to the authoritative enunciation of the law in this context in *Mohinder Singh Gill's case.* With the greatest respect we would record our dissent from the view expressed in the *Goodyear's case* and other judgments taking an identical view.

10. In the light of the aforesaid discussion the answer to the question posed at the outset is rendered in the affirmative and it is held that the rule of *audi alteram partem* is attracted to the exercise of power a second time under section 10(1) of the Act whilst referring the matter for adjudication after the same had been rejected earlier. Applying the above the finding of the Tribunal on Issue No. 3 is patently illegal and is hereby quashed.

11. Again the finding of the Tribunal on issue No. 4 seems to be equally untenable in law. In this context it is apt to read the relevant parts of the certified Standing Orders Nos. 36 and 37:—

> "36. *Application for leave.*—(i) An employee who desires to obtain leave of absence shall apply through his departmental head ;
>
> (ii) to (vi) * * *.
>
> (iii) If a workman after proceeding on leave desires an extension thereof, *he shall make an application in writing by registered post well in advance for the reply to reach him before the expiry of the leave already granted.* A written reply with regard to the grant of extension of leave shall be sent to the workman by registered post on the address supplied by him, but if he fails to supply a forwarding address, the reply will be sent to the address available in the records of the establishment, provided that if no communication is received by the workman in reply to his application for extension of leave, he must presume that the extension has been refused.

37. *Absence without leave and absence in excess of sanctioned leave.*—A workman who absents himself for ten consecutive days or overstays leave beyond the period of leave originally granted or subsequently extended *for ten* consecutive days will be deemed to have left the services of the Company without notice. The Company in such a case need not give any notice of termination to the workman as it will be deemed to be a case of voluntary abandonment of service."

Construing the above provisions it deserves recalling that these certified Standing Orders have statutory force under the Industrial Employment (Standing Orders) Act, 1946. This aspect does not need elaboration and is well settled by the authoritative precedent in *Buckingham and Carnatic Co. Ltd.* v. *Venkatiah and another* (8) and *National Engineering Industries Ltd.* v. *Hanuman* (9).

12. Now adverting first to Standing Order No. 37 aforesaid the plain language thereof specifically mentions an absence of 10 consecutive days. The respondent having overstayed his leave from the 27th of November to the 9th of December, 1975, had obviously remained absent for more than 10 consecutive days. The Tribunal, however, without much discussion construed Standing Order 37 to mean not merely 10 consecutive days but specifically as "10 consecutive working days". This view would appear to be plainly against the elementary canons of construction for one cannot inject or introduce words into a provision which are not there. This apart, one is unable to see the rationale of introducing this element in the Standing Order No. 37. Such a view carried to its logical abstruse length would mean that there cannot in this context be ever an absence of 10 consecutive working days where a weekly holiday or holidays intervene. The Tribunal seems to take the view that any holidays or holidays intervening in the unauthorised absence are to be excluded from consideration and if that were so there would invariably be a statutory holiday in the week which will give a fresh terminus for counting the next consecutive working days and so on. But this apart, it seems obvious from the combined reading of Standing Orders 36 and 37 that the intent of the provisions is that unauthorised

(8) A.I.R. 1964 S.C. 1272.

(9) A.I.R. 1968 S.C. 33.

absence for a continued spell of 10 days entitles the employer to terminate the services and will be deemed to be a case of voluntary abandonment of service by the workman. To hold that because a holiday or a number of holidays intervened an unauthorised absence before and after the same should be condoned by taking them as extenuating circumstance does not appear to us as tenable in this context. We are inclined to hold that because of its language and the intent of the Standing Orders the 10 consecutive days therein mean strictly so without introducing the hiatus of the theory of working days or holidays therein.

12-A. The matter can be examined from another aspect also. In *Buckingham and Carnatic Co's case* (supra), their Lordships had to construe Standing Order No. 8(ii) which was applicable. This was in the following terms:—

> "*Absent without leave.*—Any employee, who absents himself for *eight consecutive working days* without leave shall be deemed to have left the Company's service without notice thereby terminating his contract of service. If he gives an explanation to the satisfaction of the management, the absence shall be converted into leave without pay or dearness allowance."

It would appear from the above that industrial law is well aware of the distinction between an absence of consecutive working days or merely consecutive days simpliciter. Where the intent or the agreement between the employer and the employee is to that effect from certified Standing Orders themselves mention the requisite number of consecutive working days. Consequently to read a Standing Order which talks of merely the consecutive days and that which expressly uses the terminology of consecutive working days as identical would hardly be tenable.

13. Again the Tribunal seems to have taken the view that merely sending an application for extension of leave was tantamount to extending the same and further that the posting of such a letter under a certificate of posting would raise an irrebuttable presumption that it had been received by the employer. Both these assumptions are not well-founded. A reference to the aforesaid Standing Order No. 36(vii) would show that one of the requirements for an

application for extension of leave is that it must be forwarded by a registered post well in advance for the reply to reach the workman before the expiry of the leave already granted. It is the admitted case that this was not complied with in so far as this was not sent by registered post and not adequately well in advance. It is further provided that if no communication is received by the workman in reply to his application for extension of leave he must presume that the extension has been refused. Herein again it is not in dispute that no acceptance whatsoever for this extension was ever granted or communicated. That being so, the mere alleged forwarding of an application for extension is of no consequence in face of the clear mandate in Standing Order 36.

14. The petitioner-management had taken the categoric stand that in fact no such application for extension of leave had been received. It produced its record to show the absence of any such receipt. Consequently the presumption, if any, stood rebutted. Even in the context of registered acknowledgement due letter their Lordships in *Radha Kishan* v. *State of Utter Pradesh* (10) have observed as follows:—

> "As regards the other point, that is based on the fact that there were acknowledgements in respect of three letters in the post office we may point out that the exercise of these acknowledgements would no more than raise a presumption that those articles were delivered to the addressees. The addressees have been examined in this case and they have deposed that the letters in question were not received by them. Their evidence has been believed by the High Court and, therefore, there is an end to the matter."

Again in this context it was observed as under in *Meghji Kanji Patel* v. *Kundanmal Chamanlal Mehtani* (11).

> "I am afraid, the learned Judge has lost sight of the fact that sending of a letter by registered post merely raises a rebuttable presumption that the letter was delivered to the

(10) A.I.R. 1963 S.C. 822.

(11) A.I.R. 1968 Bombay, 387.

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