which he had not chosen to avail in the right manner. Thus, this point too is not of any substance and sequelly fails.

(9) No other point has been urged.

(10) For the foregoing reasons, there is no force in this petition which is hereby dismissed with costs.

N.K.S.

Before J. V. Gupta, J.

INTRA CHEMICALS AND DRUGS (P) LTD.,—*Appellant.*

versus

RUPA NARAIN,—*Respondent.*

First Appeal from order No. 248 of 1976.

May 23, 1984.

Workmen's Compensation Act (VIII of 1923) as amended by Act LXV of 1976—Section 4 Schedule IV—Accident taking place after the amendment of the Schedule—Compensation, however, claimed under the unamended Schedule and the Commissioner allowing the same—Claimant subsequently moving the Commissioner for enhanced compensation under the amended Schedule—Commissioner—Whether competent to modify his Award and increase the quantum of compensation in accordance with the amended Schedule—Notice of subsequent application not given to the employer—Absence of such a notice—Whether causes any prejudice.

Held, that where the accident took place after the amending Act of 1976, the claimants were entitled to the enhanced amount of compensation as provided in the Schedule. Simply because in the original application, the amount claimed was in terms of the unamended Schedule, it will not deprive them of the amount to which they were entitled under the Act. In the subsequent application it was specifically pleaded that the earlier application was filed under the old Schedule through a *bona fide* mistake and, therefore, it could not be said that the earlier order passed by the Commissioner could not be modified by him subsequently when the amended provisions were brought to his notice. May be that

the notice should have been given to the employer of the application filed subsequently on behalf of the claimants, but in the circumstances, it could not be said that it caused prejudice to the employer in any manner. It is to be borne in mind that the Act is a social legislation and if the workmen are entitled to a particular sum under the Act, they could not be deprived of the same because of a *bona fide* mistake in not claiming the same. Thus, it was within the jurisdiction of the Commissioner to modify his earlier order and to pass the appropriate orders as provided under the Act.

(Paras 4 and 5).

First Appeal from the order of the Court of the Commissioner under the Workmen's Compensation Act, Gurgaon, dated 13th July, 1976 directing the respondent to deposit a sum of Rs. 16,800.

Arun Jain Advocate, *for the Appellant.*

Anil Seth Advocate, *for the Respondent.*

JUDGMENT

J. V. Gupta, J.—

(1) Narain Singh, workman, died during the course of his employment on March 13, 1976. The application for compensation, dated May 17, 1976, was filed on behalf of his widow and the children under the Workmen's Compensation Act, 1923 (hereinafter called the Act). The amount of compensation claimed therein was Rs. 8,000 as per Schedule IV to the Act, according to the claimants, as the salary of the workman was stated to be Rs. 230 per month. The said application was contested on behalf of the employer-appellant. Ultimately, the same was allowed by the Commissioner under the Act, and the employer was directed to deposit a sum of Rs. 8,000 as the compensation payable to the claimants. However, after the passing of the said order by the Commissioner, another application, dated July 9, 1976, was moved on behalf of the claimants for the modification of the order passed by the Commissioner earlier on June 30, 1976, whereby he had allowed Rs. 8,000 as the compensation payable to the claimants. In the subsequent application, it was stated that in the application for compensation, the compensation amount of Rs. 8,000 was claimed under the old Schedule IV to the Act, which had, in fact, been revised subsequently with effect from October 1, 1975, through a *bona fide* mistake, and that under the amended Schedule IV, they were entitled to the compensation of Rs. 18,000. The learned

Commissioner allowed the said application,—*vide* his order, dated July 13, 1976. However, the amount of compensation allowed was Rs. 16,800 and not Rs. 18,000 as claimed in the subsequent application because the monthly income of the workman was found to be Rs. 200 only. Dissatisfied with the same, the employer, i.e., M/s. Intra Chemicals and Drugs (P) Ltd. filed the present appeal in this Court.

2. The main argument raised on behalf of the appellant is that admittedly, in the claim application a sum of Rs. 8,000 was claimed and the said sum was allowed as compensation by the Commissioner *vide* order, dated June 30, 1976. Once the said order was passed, the same could not be reviewed subsequently as there was no power under the Act to do so. Besides, it was also argued that no notice of the subsequent application was given to the appellant and that the order dated July 13, 1976, was passed behind the back of the appellant.

3. After hearing the learned counsel for the parties, I do not find any merit in this appeal.

4. It it not disputed that according to Schedule IV (as it stood on October 1, 1975), the claimants were entitled to a sum of Rs. 16,800 at the time of the filing of the original application, dated May 17, 1976. Admittedly, the death of Narain Singh had taken place on March 13, 1976. At that time, according to the amendment to the Schedule which came into force with effect from October 1, 1975, the amount of compensation payable was Rs. 16,800 if the monthly wages of the workman were more than Rs. 150 but not more than Rs. 200. Simply because in the original application, the amount claimed was Rs. 8,000, it will not deprive them of the amount to which they were entitled under the Act. In the subsequent application, dated July 9, 1976, it was specifically pleaded that the earlier application was filed according to the old Schedule through *bona fide* mistake and, therefore, under the circumstances, it could not be successfully argued on behalf of the appellant that the earlier order passed by the Commissioner, dated June 30, 1976, could not be modified by him subsequently when the amended provisions were brought to his notice.

(5) It may be that the notice should have been given to the appellant of the application filed subsequently on behalf of the

claimants, but on the facts admitted, it could not be successfully argued that it prejudiced the appellant in any manner. It is to be borne in mind that the Act is a social legislation and if the workmen are entitled to a particular sum under the Act, they could not be deprived for the same because of a *bona fide* mistake in not claiming the same. Thus, under the circumstances, the Commissioner was within his jurisdiction to modify his earlier order, dated June 30, 1976, and to pass the appropriate order as provided under the Act.

(6) In this view of the matter, this appeal fails and is dismissed with costs.

N.K.S.

Before I. S. Tiwana, J.

HARPHOOL SINGH,— *Petitioner.*

versus

THE UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 1281 *of* 1984

May 31, 1984

Indian Telegraph Rules, 1951—*Rule* 429—*Telephone installed in premises where subscriber carries on family business—Subscriber later starting business with partners in another premises as well under a different name—Department allowing extension of the telephone in the other premises—Telephone disconnected on the ground that it was being used by somebody 'other than actual subscriber'—Such action of the department—Whether justified under Rule* 429.

Held, that a bare reading of Rule 429 of the Indian Telegraph Rules, 1951, indicates that it envisages a situation where the subscriber excluded himself from the use of the telephone by transferring, assigning or subletting it in favour of somebody else. Where the department nowhere identifies as to who is the assignee, sublettee, or transferee of the telephone and by merely finding that the telephone was being used by another firm without stating the capacity in which it was being so used, the action of the department in disconnecting the telephone cannot be justified in terms