

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**GLENIA UY, for and in behalf of her
minors,^[*] REYNALDO, MARIA ELENA
(MARILEN), and CONCHITA, all
surnamed UY,**

Petitioners,

-versus-

**G.R. No. L-43389
April 28, 1980**

**WORKMEN'S COMPENSATION
COMMISSION and LUCY PEREZ,**

Respondents.

X-----X

DECISION

MAKASIAR, J.:

This a petition for review on certiorari (pp. 1-26, rec.) of the decision of the Workmen's Compensation Commission dated February 23,

1976 in RO9-W-C-Case No. 14120 [Annexes “K” - “K-5”, pp. 58-63, rec.].

It appears that petitioners are all the children of the deceased Ki Lam Uy with his common-law wife, Pura Primer. Glenia Uy, daughter of the deceased, being of age, filed the present petition for and in behalf of her minor brother, Reynaldo, and minor sisters, Maria Elena (Marilen) and Conchita, all surnamed Uy.

The instant petition had its genesis at about 7:30 in the evening of September 27, 1974 when deceased Ki Lam Uy, also known as Vicente Uy, was killed by robbers at the farm house (bodega) of private respondent Lucy Perez at Sitio Agay-ayan, Barrio Tugbong, Kananga, Leyte.

On November 15, 1974, claimants-petitioners filed a Notice and Claim for Compensation in Death Cases before Regional Office No. 9, Department of Labor, Tacloban City, seeking to recover death compensation benefits for the death of their father, Ki Lam Uy, from private respondent, Lucy Perez.

On December 10, 1974, a copy of the claim was sent by special delivery to private respondent, Lucy Perez, by the Chief of the Workmen’s Compensation Unit, Regional Office No. 9, Department of Labor, Tacloban City, requiring the said private respondent to submit to said office the enclosed Workmen’s Compensation Form No. 3, Employer’s Report of Accident or Sickness (Annex “C”, p. 31, rec.).

For failure of private respondent to accomplish the required Employer’s Report, the Acting Chief of the Workmen’s Compensation Unit pursuant to Section 2, Rule, 11, Rules of the Workmen’s Compensation Commission, after processing the claim and the supporting evidence submitted by claimants-petitioners, issued an Award dated December 27, 1974, granting death compensation benefits to claimants-petitioners, including Pura Primer, the common-law widow of the deceased, in the amount of P6,000.00, pursuant to Section 8 (b) of the Workmen’s Compensation Act, as amended, plus the sum of P200.00 as burial expenses. Private respondent, Lucy Perez was also required to pay the additional sum of P3,000.00 under Section 4-A of the Act, due to private respondent’s

violation of Bureau of Labor Standards Safety Orders Nos. 1, 6 (pars. 1 & 2) and 7, Section 56 of the Workmen's Compensation Act, as amended and for private respondent's failure to secure a permit to employ an alien pursuant to Department Order No. 2, and for violation of the Nationalization and Retail Trade Law. Private respondent Lucy Perez was further ordered to pay to the Workmen's Compensation Fund, the sum of P91.00, pursuant to Section 55 of the Act and likewise the sum of P450.00 as attorney's fees, pursuant to Section 31 of the same Act (Annexes "D" - "D-1", pp. 32-33, rec.).

On January 13, 1975, private respondent's counsel filed a motion for extension of time to file his motion for reconsideration alleging inter alia that the cause of the death of the deceased was not work-connected (Annexes "E" - "E-1", pp. 34-35, rec.)

On January 20, 1975, private respondent filed the motion for reconsideration from the December 27, 1974 Award on the grounds that the respondent did not fail to controvert the instant claim for compensation; that the Hearing Officer gravely erred in not giving the private respondent an opportunity to present evidence to rebut claimant's claim after reception of the latter's evidence ex parte and thereby violating the constitutional mandate of due process; and that the death of the deceased was not compensable (Annexes "F" - "F-4", pp. 36-40, rec.).

On April 18, 1975, the Acting Chief of the Workmen's Compensation Unit, Regional Office No. 9, Department of Labor, Tacloban City, issued an order granting the motion for reconsideration in view of the absence of an opposition thereto and set the case for hearing on the merits on April 30, 1975, at 8:00 A.M. until terminated and with no postponements (Annex "G", p. 41, rec.).

Hence, hearings on the merits were conducted before the above-said Acting Chief of the Workmen's Compensation Unit, Regional Office No. 9, Department of Labor, Tacloban City and/or Hearing Officer, and the parties duly represented by their counsels of record adduced evidence in support of their respective contentions.

On October 28, 1975, after several hearings conducted by the aforesaid Hearing Officer, a decision was rendered which states

among others, “that although the respondent has failed to controvert the claim within the period provided for under Section 45 of the Act, a hearing of the case, with notice to all the parties was conducted to determine the compensability of the claim” (Annex “H”, p. 42, rec.). Moreover, the dispositive portion of said decision substantially revived the Award dated December 27, 1974 (Annex “H-8”, p. 50, rec.).

On November 12, 1975, a motion for reconsideration was filed by private respondent, thru counsel on the following grounds, to wit: 1) that Honorable Office [Workmen’s Compensation Unit Regional Office No. 9] gravely erred in considering deceased Ki Lam Uy as respondent’s employee; 2) assuming that deceased was an employee, respondent had already complied with her obligation in accordance with the Workmen’s Compensation Act [Annexes “I” — “I-5”, pp. 51-56, rec.].

On November 28, 1975, an order denying said motion for reconsideration was issued and likewise ordering the elevation of the entire records of the case to the Workmen’s Compensation Commission for review pursuant to the provisions of Section 4, Rule 19, of the Rules of the Workmen’s Compensation Commission (Annex “J”, p. 57, rec.).

On February 23, 1976, the respondent Workmen’s Compensation Commission rendered a decision reversing the decision of the Hearing Officer on the ground that the deceased, Ki Lam Uy was not an employee of private respondent, thereby absolving herein private respondent from any liability (Annexes “K” — “K-5”, pp. 58-63, rec.).

Hence, the instant petition for review.

I

Private respondent in her answer to the instant petition claims that the petition, not being verified by the petitioners but by their counsel, is fatally defective.

The claim has no merit. In the past, it has been the constant rulings of this Court that lack of verification is merely a formal defect. “In fact,

many authorities consider the absence of verification a mere formal, not jurisdictional, defect, the absence of which does not of itself justify a court in refusing to allow and act in the case” (71 C.J.S. 744-745). This Court declared:

“The requirement regarding verification of a pleading is simply intended to secure an assurance that what are alleged in the pleadings are true and correct and not the product of the imagination on a matter of speculation, and that the pleading is filed in good faith. The requirement regarding verification of a pleading is a formal, not a jurisdictional requisite. The requirement regarding verification of a pleading is simply a condition affecting the form of pleading (Rule 7 of the Rules of Court is entitled ‘Formal Requirements of Pleadings,’ and it is under this Rule [Sec. 6] that the requirement regarding verification is provided), the non-compliance of which does not necessarily render the pleading fatally defective. The Court may order the correction of the pleading if the verification is lacking, or act on the pleading although it is not verified if the attending circumstances are such that the strict compliance with the rule may be dispensed with in order that the ends of justice or the law may thereby be served” (Oshita vs. Republic, L-21180, March 31, 1967, 19 SCRA 700; Miller, et al. vs. The Director of Lands, et al., L-16761, Oct. 31, 1964; Nicolas vs. Director of Lands, et al., L-19147-8, Dec. 28, 1963; The Philippine Bank of Commerce vs. Macadaeg, et al., L-14174, Oct. 31, 1960; Tavera vs. E. Hogar Filipino, Inc., et al., 98 Phil. 481; Malagum vs. Pablo, 46 Phil. 19).

The above-quoted ruling was reiterated by this Court through Mr. Justice Barredo in Valino vs. Muñoz (L-26151, Oct. 22, 1970), which held:

“Assuming that the rule of verification, Sec. 6 of Rule 7, has not been strictly complied with, it has been held anyway that absence of verification is a mere formal, not jurisdictional defect, particularly when the facts alleged are more or less indisputable or borne clearly by the records.”

Furthermore, while it is true that the petition now before Us was not verified by the claimants-petitioners, it was, however, verified by their counsel. Herein private respondent contends that the verification by the counsel and not by the claimants-petitioners, is fatal. WE believe otherwise.

“A verification by the attorney is adequate compliance with Rule 7, Sec. 6, it being presumed that facts by him alleged are true to his knowledge in view of the sanctions provided in Sec. 5 of the Rules of Court (Guerra Enterprises Company, Inc. vs. Court of First Instance of Lanao del Sur, L-28310, April 17, 1970, 32 SCRA 314 — citing Arambulo vs. Perez, 78 Phil. 387; Cajefe vs. Fernandez, L-15409, Oct. 19, 1960).”

Earlier, We held that “it is only when the person verifying is other than the attorney who signs the pleading that the affiant must state that the allegations thereof are true of his own knowledge, but when the complaint is signed by the attorney the latter’s oath couched in the usual form ‘subscribed and sworn to before me, etc.’ is substantial compliance with the Rules of Court (Arambulo vs. Perez, 78 Phil. 387 [1947]; Emphasis supplied).

II

Private respondent next contends that what is raised by the claimants-petitioners are findings of facts of the respondent Workmen’s Compensation Commission which is definitely within the province of appeal and not for certiorari.

This contention, in Our opinion, is untenable. It is true that the remedy of certiorari is generally resorted to only in cases where the remedy of appeal is unavailable. This, rule, however, is not so rigid and strict as not to admit of any exception. This Court in a long line of decisions laid down the ruling that certiorari is available despite the existence of the remedy of appeal where public policy so dictate or the broader interests of justice so require (Fernando vs. Vasquez, L-26517, Jan. 30, 1970, 31 SCRA 294; Tirona vs. Nañawa, L-22107, Sept. 30, 1967, 21 SCRA 395; Jose vs. Zulueta, May 31, 1961, 2 SCRA 574; Pachoco vs. Tumangday, May 25, 1960, 108 Phil. 238; Pineda & Ampil Mfg. Co. vs. Bartolome, Sept. 30, 1954, 95 Phil. 930; People vs.

Zulueta, L-4017, Aug. 30, 1951, 89 Phil. 756, 757; Maningat vs. Castillo, 75 Phil. 532; Arevalo vs. Nepomuceno, No. 45332, Oct. 27, 1936, 63 Phil. 627; Dais vs. CFI, No. 28770, Jan. 21, 1928, 51 Phil. 396; Yu Cong Eng vs. Trinidad, 47 Phil. 385; Dimayuga vs. Fajardo, No. 18913, April 15, 1922, 43 Phil. 304; Leung Ben vs. O'Brien, No. 13602, April 6, 1918, 38 Phil. 182; Rocha vs. Crossfield, No. 3430, Aug. 7, 1906, 6 Phil. 355).

In the light of the rulings laid down by this Court in the decisions afore-cited, it is clear that dismissal of the instant petition which seeks to enforce the provisions of the Workmen's Compensation Act, as amended, a benign legislation intended to implement the social justice guarantee mandated by the Constitution is a foul blow to the humanitarian design of the law.

III

Now, the issue of whether there was employer-employee relationship between private respondent Lucy Perez and the deceased Ki Lam Uy alias Vicente Uy.

In dismissing the claim of claimants-petitioners, the respondent Workmen's Compensation Commission primarily based its decision on its findings that there was no substantial proof that deceased Ki Lam Uy was an employee of the respondent; that at the time of the incident, the rice mill that private respondent allegedly operates was not yet duly registered; and that private respondent's rice and corn buying and milling business is a nationalized industry, in which employing an alien like the deceased, unless duly authorized or allowed by appropriate authorities, is penalized by law.

WE cannot agree with private respondent. The records are replete with proof that the rice mill was established and started operating in 1972 (p. 47, rec.) and in fact private respondent admitted that she had four [4] employees in her rice mill (Annex "O", p. 57, rec.). Private respondent's pretension of ignorance of the existence of employer-employee relationship is indeed inconceivable considering that during the period from 1972 up to the time of the bloody incident, she had been commuting from Ormoc City to Kanaga, Leyte, in connection with her rice mill business.

It is likewise clear from the records that private respondent committed violations of the laws and regulations prohibiting the employment of aliens in nationalized industries and operating a non-registered rice mill. To afford her immunity from the application of the Workmen's Compensation Law by reason of her failure to comply with the laws would put a premium on her illegal acts. It is axiomatic that two wrongs do not make a right. One unlawful act does not justify another.

The fact that the deceased, Ki Lam Uy, was between the age of 65 and 68 years, does not necessarily show that private respondent could not have employed such an old man. It has been shown by claimants-petitioners that as early as 1968, when deceased Ki Lam Uy was only 61 years old, or possibly even before that date, the late Chua Lim, the original Chinese owner-manager of the entire business and late husband of private respondent, Lucy Perez, had already engaged the services of Ki Lam Uy as his "overseer," "machine operator" and "cashier," or in short as Chua Lim's "utility man" with a weekly salary of P70.00 until the death of Ki Lam Uy. This stands un rebutted. It is logical to conclude that private respondent, who is staying at Ormoc City, which is approximately twenty-three (23) kilometers from Kananga, Leyte [Ministry of Public Highways, Map of Northern Leyte showing road system, Scale: 1,200,000 (1967)], continued to comply the deceased as an "overseer," "cashier" or "machine operator," as the records reveal that the deceased had been working in private respondent's rice mill with the assistance of deceased's son, Reynaldo, who stayed with him at the farm house. Moreover, the friendship between the late Chua Lim and Ki Lam Uy fortifies the fact that the former employed the latter despite the latter's age and possible violations of the law.

The fact that Ki Lam Uy stayed at the farm house where he was killed by the robbers and the act of the private respondent in defraying the total amount of P4,050.00 consisting of P3,000.00 in cash, P750.00 for the tomb and P300.00 for the priest, confirms the recognition by private respondent of the deceased's faithful and loyal service to her and her late husband Chua Lim, which Ki Lam Uy rendered at the sacrifice of his own dear life that fateful night of September 27, 1974.

It is claimed by private respondent that claimants-petitioners failed to support its claim of employment with documentary evidence but only through oral testimonies of witnesses.

WE cannot agree with private respondent for “an employee is any person in the service of another under a contract for hire, express or implied, oral or written (Sunripe Coconut Products Co., Inc. vs. Court of Industrial Relations & Sunripe Coconut Workers’ Union [CLO], L-2009, April 30, 1949, XIV L.J. 472; citing Medermott’s Case, 283 Mass. 74; Werner vs. Industrial Comm., 212 Wis. 76; emphasis supplied).”

Moreover, it is true that the existence of employer-employee relationship is often difficult of determination because it was purposely made so by employers bent on evading liability under the Workmen’s Compensation and Nationalization Laws.

“Hence, if the object of the law is to be accomplished with a liberal construction, the creation of the relationship should not be adjudged strictly in accordance with technical legal rules, but rather according to the actualities and realities of industrial or business practice (Fernandez & Quiazon, Labor Standards & Social Legislation, 414 [1964]; Pucan & Besinga, Comments & Annotations on the Workmen’s Compensation Act, as amended, 32 [1971], citing the case of Asia Steel Corporation vs. Workmen’s Compensation Commission, L-7636, June 27, 1955).”

In the case at bar, records disclosed that deceased Ki Lam Uy was employed as “machine operator,” “overseer” or “cashier” of private respondent (Annex “N”, p. 66, rec., Annex “B”, p. 30, rec., Annex “M”, p. 65, rec.).

The respondent Commission failed to give due weight to the police report of Patrolman Amador Profetana, which identified the deceased as “the overseer of Lucy Perez,” the private respondent who resides in Ormoc City.

Patrolman Profetana, who investigated the killing made an initial spot report stating among other things “(t)hat at about 1900H [7:00

P.M.], 27 September 1974 an incident took place in the house of a certain Lucy Perez at Sitio Agay-ayan, Bo. Tugbong, Kananga, Leyte per verbal report of the rice mill caretaker thereat received at the Police Headquarters on the same evening of 27 Sept. 1974 at around 2030H [8:30 P.M.].

“A combined PC-Police Team was sent to conduct an on-the-spot investigation and it was found out that a certain Vicente Uy (alias Ki Lam Uy), 67 years, married, Chinese citizen under ACR # _____ and an overseer of Lucy Perez with residence at Ormoc City was killed inside his dwelling after having been hacked several times on different parts of his body that resulted in his immediate death” [Annexes “L” & “M” — Police Report, pp. 64-65, rec; emphasis supplied].

A portion of the decision of the Hearing Officer, who found the existence of employer-employee relationship between the deceased and private respondent, is hereunder quoted:

“The said witness (Patrolman Amador Profetana) further testified that the deceased Ki Lam Uy, was in charge of the management of the farm of Lucy Perez, as well as the rice mill, the buying and selling palay, and other activities in connection with the business of the respondent, Lucy Perez; that the respondent, Lucy Perez, was engaged in buying palay and milling said palay in her rice mill at Bo. Tugbong, Kananga, Leyte and selling the milled palay at Ormoc City; that because of the activities of the deceased, he considered the deceased as an overseer of the respondent, Lucy Perez, that he found from his investigation that the cause for which the chinaman Ki Lam Uy alias Vicente Uy was murdered was because of the demand of the robbers for money from him as the deceased was the one handling the money of the respondent in buying palay, and as such he was entrusted with the same; that he further found out that at the time of the robbery there was no sufficient cash in the possession of the deceased and the cash he had was hardly sufficient to buy five (5) sacks of palay, but in spite of that, the deceased Ki Lam Uy alias Vicente Uy refused to surrender the same to the robbers as the same was in his possession, so he was killed by the assailants (robbers).

“On cross-examination by counsel for the respondent, the witness maintained the fact that the deceased was the overseer of the respondents and not Thomas Un, who was merely caretaker of the rice mill, that in his investigation a barrio councilor of Bo. Tugbong, Kananga, Leyte testified before him that the bodega where the deceased was murdered belonged to Lucy Perez” (pp. 44-45, rec.; Emphasis supplied).

Upon the other hand, the testimonies of Nonito On Sanchez and Thomas Un are impaired as they are by bias. Nonito On Sanchez, stepson of private respondent, testified that he does not know if there are employees in the rice mill business of private respondent as he was positive that a license for its operation was not yet secured and yet he claims to be managing the affairs of the farm house where he stayed as early as 1972 or before the gory incident happened and which is only about fifteen (15) meters away from the rice mill. He also testified that deceased Ki Lam Uy was not an employee of his stepmother [pp. 46-47, rec.].

The second witness, Thomas Un, tenant of Nonito On Sanchez, likewise testified that the deceased Ki Lam Uy was not an employee of private respondent as there were no employees in the farm of private respondent. He admitted that private respondent, Lucy Perez, requested him to testify in the case and that it was he who reported the incident to the Chief of Police of Kananga, Leyte. The investigation conducted by the police establishing the fact of existence of employer-employee relationship between the deceased and the private respondent should have been given probative weight by respondent Commission than the biased testimonies of Nonito On Sanchez, stepson of private respondent, and Thomas Un, tenant of Nonito On Sanchez.

There is no quarrel as to the admissibility of said police report as Section 1 (d), Rule 16 of the Workmen’s Compensation Commission Rules specifically affirms the admissibility of reports of government agencies covering material facts. Additionally, Section 5318.01, Labor Manual impliedly supports the admissibility of police reports. It reads:

“The cooperation of the following government agencies or officials may be sought in developing evidence to establish claims:

- “a. The Bureau of Mines & Bureau of Health;
- “b. The Bureau of Customs;
- “c. The Weather Bureau;
- “d. Provincial, City or Municipal Officials — When appropriate, the aid of these officials may be requested in securing copies of police reports, locating claimant’s or employers’ whereabouts, or in making payments of compensation to claimants (Fernandez & Quiason, Labor Standards & Welfare Legislation 689 [1964]).

x x x

“The findings of the Workmen’s Compensation Commission that an employment relation existed was upheld as supported by substantial evidence. In a police investigation conducted on the very day of the accident, two workers of the petitioners declared in the course of the investigation that the deceased was their co-worker. Considering that these statements were made at a time when connivance was most remote, because the question of compensation had not yet arisen, these must be accepted as truthful, although subsequently these workers tried to repudiate their own declarations” (Fernandez & Quiason, *supra*, Appendix, citing the case of *Jueco vs. Flores*, L-19325, Feb. 28, 1964, 10 SCRA 304, 307; Emphasis supplied).

The initial spot report (Annexes “L” & “M”) made by the police officer in the case at bar as to surrounding circumstances of the killing of Ki Lam Uy merits belief as it was likewise made at a time when connivance between the persons investigated was most remote and the question of compensability under the Workmen’s Compensation Act was not yet in their minds.

It may not be amiss to state further that nothing appears in the record that would sufficiently overcome the presumption that official duty had been performed. Henceforth, there being no showing that the police officer in the present case maliciously or recklessly conducted the investigation and prepared the police report, the police report must be given more probative weight than the bias testimonies of private respondent's witnesses. The ruling of respondent Commission was in effect not in furtherance of the presumption of moral sense of responsibility of police officers and the presumption of regularity of acts of military officers contrary to Our ruling in the case of *People vs. Dela Cruz* (L-1745, May 23, 1950; 5 Martin, Rules of Court 480 [1974]).

While as a rule, matters of credibility and weight to be assigned to a particular item of evidence are primarily for the Commission, the same is true only where the findings of the Commission are supported by substantial, credible and competent evidence.

IV

WE deemed it likewise significant to resolve the claim of private respondent that the death of the deceased was not work-connected (Annexes "E" & "E-1", pp. 34-35, rec.) and that murder is not compensable not to mention the fact that the deceased was murdered outside working hours [Annex "F-3", p. 39, rec.].

It is true that the late Ki Lam Uy was murdered outside working hours, but this is not fatal to the claim of petitioners. It must be pointed out that the nature of Ki Lam Uy's work as an overseer requires his presence in the farm house or bodega of private respondent even during nighttime. Henceforth, under the so-called "Bunkhouse Rule," where the employee is required to stay in the premises or in quarters furnished by the employer, injuries sustained therein are in the course of employment regardless of the time the same occurred.

Thus, in *Martha Lumber Mills, Inc. vs. Lagradante* (L-7599, June 27, 1956, 52 O.G. 4230), this Court said:

“WE cannot accept petitioner’s argument that the death of Felicito Lagradante did not arise out of and in the course of his employment, having been murdered outside of office hours. It appears that the deceased was required to live and sleep in the quarters provided by the petitioner, and obviously by reason of the nature of his duties as a concession guard, with the result that, although he had to observe certain working hours, he nevertheless was compelled to stay in his quarters, thereby in effect making himself available, regardless of time, for the protection of the rights and interest of the petitioner in its concession.”

The aforecited decision is amply supported by American authorities. Thus:

“Closely allied to the lodging cases is the ‘bunkhouse’ doctrine. Where the employer provides the sleeping quarters, all reasonable risks therein, whether by fire, slipping on the floors, or otherwise are compensable as arising out of and in the course of the employment. In short, ‘bunkhouse’ injuries are compensable as incidents of the employment” (Horovitz, 3 NACCA L. J. 63-64).

“Special rules apply where the employee is compelled or expected to live on the employer’s premises or quarters furnished by the gang, etc. In such cases, the so-called ‘bunkhouse rub’ protects the employee against any injury sustained while he is making reasonable use of such premises” (Riesefeld & Maxwell, 250; cited in Fernandez & Quiazon, Labor Standards & Welfare Legislation 570-571 [1964]).

V

It is finally contended by private respondent that the respondent Commission’s decision was purely based upon findings of facts and therefore cannot be the subject of the present petition. The claim merits scant consideration for this Court is authorized to inquire into the facts when the conclusions are not supported by substantial or credible evidence (Yutuc vs. Republic of the Philippines, L-43270, Dec. 29, 1978, 87 SCRA 436; Mulingtapang vs. WCC & Marcelo Steel

Corporation, L-42483, Dec. 21, 1977, 80 SCRA 610, 614; Abong vs. WCC, Nos. L-32347-53, Dec. 26, 1973, 54 SCRA 379; International Factory vs. Vda. de Doria and WCC, No. L-13426, Sept. 30, 1960, 109 Phil. 553; PAL vs. PAL Employees ASSOCIATION, L-8190, Oct. 31, 1958).

VI

Moreover, there is no question that the claim was not seasonably controverted as correctly found by the Hearing Officer/Acting Chief of the Workmen's Compensation Unit.

The records disclose that private respondent failed to file an answer in controversion to petitioner's claim for compensation. This is patently a violation of the provisions of Section 45, paragraph 2 of the Workmen's Compensation Act, as amended, which reads: "In case the employer decided to controvert the right to compensation, he shall either on or before the fourteenth day of disability or within ten days after he has knowledge of the alleged accident, file a notice with the Commissioner, on a form prescribed by him, that compensation is not being paid, giving the name of the claimant, name of the employer, date of the accident, and the reason why compensation is not being paid. Failure on the part of the employer or the insurance carrier to comply with the requirement shall constitute a renunciation of his right to controvert the claim unless he submits reasonable grounds for the failure to make the necessary reports, on the basis of which grounds the Commissioner may reinstate his right to controvert the claim."

Private respondent, in taking exception to petitioners' contention that she failed to seasonably controvert the claim, declared that the copy of the claim was received only sometime during the first week of January 1975 or a week after the December 27, 1974 award.

Nonetheless, it is inconceivable that the death of the deceased employee on September 27, 1974, which occurred at the farm house (bodega) of private respondent, was not known to the latter who was engaged in buying and milling palay in her rice mill at Barrio Tugbong, Kananga, Leyte and selling the milled rice at Ormoc City. Such failure to timely controvert the claim results in a renunciation of

respondent employer's right to challenge the claim and a waiver of all non-jurisdictional defenses (Natividad vs. WCC, et al., L-42021, Nov. 21, 1979; Villones vs. ECC, et al., L-46200, July 30, 1979; Mesina vs. Republic, L-43517, May 31, 1979, 90 SCRA 489; Dulay vs. WCC, et al., L-41998, April 30, 1979, 89 SCRA 659; Marasigan vs. WCC, et al., L-43271, March 30, 1979, 89 SCRA 259; Vega vs. WCC, et al., L-43134, March 26, 1979, 89 SCRA 141).

VII

As undisputedly borne out by the records, however, private respondent has advanced payment for the burial expenses of the deceased Ki Lam Uy. Consequently, in the interest of justice and in fairness to the private respondent, she is hereby absolved from payment of the burial expenses.

The amount of P3,000.00 paid in cash by private respondent to the heirs of the deceased Ki Lam Uy, should be deducted from the amount of P6,000.00 death benefits.

WHEREFORE, THE DECISION OF THE RESPONDENT WORKMEN'S COMPENSATION COMMISSION IS HEREBY REVERSED AND SET ASIDE, AND RESPONDENT EMPLOYER IS HEREBY ORDERED.

- 1. TO PAY PETITIONERS-CLAIMANTS THE SUM OF THREE THOUSAND (P3,000.00) PESOS AS DEATH BENEFITS;**
- 2. TO PAY PETITIONERS-CLAIMANTS ATTORNEY'S FEES EQUIVALENT TO 10% OF THE TOTAL AWARD;**
- 3. TO PAY THE SUCCESSOR OF THE DEFUNCT COMMISSION, ADMINISTRATIVE FEES; AND**
- 4. TO PAY THE COSTS.**

SO ORDERED.

Teehankee, Fernandez, Guerrero, De Castro and Melencio-Herrera, *JJ.*, concur.

[*] Glenia Uy, being of age, filed the instant petition for and in behalf of her brother, Reynaldo, and sisters, Maria Elena (Marilen) and Conchita, as minor dependents of their deceased father, Ki Lam Uy.

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