

SNOW WHITE ICE CREAM & ICE DROP FACTORY AND/OR JOSE FUTCHIAN CHING (SHOULD BE SO DEE), PETITIONERS, VS. EMILIO GARCIA (DECEASED), SUBSTITUTED BY: JOVITA LOZANO VDA. DE GARCIA, ...*G.R. No. L-23727. November 29, 1971*

Ponente: FERNANDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/47d985ead3ca/>**FERNANDO, J.:**

The specific legal question raised in this petition for the review of a decision of the Workmen's Compensation Commission is new, but not the governing principle decisive of the matter, which is well-settled. It is whether the employer-employee relationship existed between the claimant Emilio Garcia, now deceased, who in his lifetime was an ice drop vendor, now substituted by his heirs, the private respondents,[1] and petitioner Snow White Ice Cream and Ice Drop Factory. Both the hearing officer and the then Associate Commissioner Jose Sanchez of respondent Commission answered the question in the affirmative. There was an appeal to the Commission, which issued a resolution of affirmance, as a majority vote to set aside the award was lacking, Chairman Nieves Baens del Rosario voting to sustain and the other member Cesareo Perez voting to reverse, the aforesaid Commissioner having retired in the meanwhile. There was a motion for reconsideration, but with the two Commissioners standing pat, the result was the same. Thus the award was not set aside. Hence this petition for review. It is our holding, as will hereafter be more fully explained, that there was an existence of an employer-employee relationship based under the governing principle of the controlling test first announced by this Court through Justice Makalintal in *Investment Planning Corporation v. Social Security System*. [2]

According to the decision of Commissioner Sanchez, the then claimant, now deceased, Emilio Garcia "began working with the respondent as an ice drop vendor in 1953. He was paid on commission basis of P0.02 per ice drop that he sold, thereby earning approximately P7.00 a day, seven days a week. As such vendor, his duties consisted mainly of breaking into small pieces the block of ice given to him, and placing them in the ice drop push-cart to prevent the ice drops from melting. Claimant, when not selling ice drops, repaired broken down pushcarts belonging to the respondent, being also a carpenter by occupation. It appears that on July 27, 1960, while preparing the pushcart assigned to him for peddling, a block of the ice he was carrying fell on his right foot, smashing three of his [toes]. After a week of medication, he resumed his work despite the fact that he was still limping; that while pushing the ice drop pushcart along Solis Street, Tondo, Manila, his swollen right foot was hit by a barbed wire. Claimant, however, continued working until August 27, 1960 when he stopped as he could no longer withstand the pain and chilling sensation that he suffered. He was brought to the North General Hospital where his right foot was amputated below the knee, the abscess having already become gangrenous. He remained in said hospital until September 16, 1960. Dr. V. Roldan, a private physician, continued treatment on the claimant while at home until the amputation wound was completely healed nine months thereafter. Claimant alleged that he spent the total amount of P700.00 for said treatment." [3]

The facts which, according to him, were established, follow: "1. Claimant was charged P.03 by the respondent for

every ice drop that he gets which, in turn, he sells to the public at P.05 each; 2. Claimant returned the unsold ice drops with full credit; and 3. Claimant was supplied by the respondent with crushed ice, icepicks, salt, and cap and ice drop pushcart bearing respondent's trade name." [4] Accordingly, in his decision of July 15, 1963, he found for the claimant, thereafter substituted upon his death on September 3, 1962 by the legal heirs, now private respondents, the circumstances in his opinion being not merely indicative, but actual proof, of employment and the injuries sustained occurring while in the performance of his duties. A motion for reconsideration was filed with respondent Commission. It was denied under the circumstances previously indicated. Then came this petition for review.

As noted at the outset, we find for private respondents and sustain the award in their favor.

1. Under the controlling test as clarified by Justice Makalintal in the aforesaid *Social Security System v. Court of Appeals*, [5] the criterion is whether the person or firm alleged to be the employer can direct or require the party assertedly enjoying the employee status to do a certain kind of work and to specify the means and methods by which the same is to be accomplished. As was emphasized by Justice Makalintal in the above decision: "The logic of the situation indeed dictates that where the element of control is absent; where a person who works for another does so more or less at his own pleasure and is not subject to definite hours or conditions of work, and in turn is compensated according to the result of his efforts and not the amount thereof, we should not find that the relationship of employer and employee exists." [6] From the facts as found, which we are not at liberty to disregard, the deceased claimant was an employee of petitioner. While this is the first case of its kind in the Philippines, it is not so in the United States. Thus from Larson's authoritative treatise on Workmen's Compensation Law: "Just as the employer may buy his raw materials outright from an independent businessman, so he can distribute his product by turning it over completely to a jobber who is an independent businessman. But, since disposition of the product is normally an inherent part of any business, there is an increasing tendency to indulge a presumption that salesman, distributors, and deliverymen who fall short of the status of businessmen holding themselves out to the public as such are employees. The circumstance that the salesman is devoting his entire time to the distribution of the one employer's product is, in most lines, an indication that he is an employee." [7] An American case cited by him, *Cooper v. Colonial Ice Co.*, [8] lends support to the above view. As was pointed out by Larson: "It is a stronger case for employment, in that the iceman did not own the ice wagon he used. It is weaker in that the ice, in form at least, was sold to the driver at \$1.20 a block with his compensation coming out of the difference between that price and his resale price of \$1.80. The privilege of returning unsold ice for credit tends to discredit the validity of the 'sale.' However, the driver's business consisted not only of orders received by the company but also of whatever orders he himself could get. There was some control, in that the driver had to begin work at 7 A.M. and quit before dark. He was held to be an employee." [9]

2. With the decisive question thus answered in favor of private respondents, it is quite clear why the award in their favor should be sustained. The second alleged error as to the delay of fourteen months in the filing of the claim for compensation after the alleged injuries does not suffice to call for a reversal in the light of the impressive number of decisions rendered by this Court. As was held in a recent case, *Operators, Incorporated v. Cacatian*: [10] "It is much too late in the day to complain about the long delay in instituting the claim here of seven years. This Court in 1965 categorically declared that the failure to file a claim within the statutory period does not affect the jurisdiction of the Workmen's Compensation Commission. Such a doctrine found mention in a 1968 decision, *Pampanga Sugar Mills v. Vda. de Espeleta*, citing two cases decided the year before. In the first, it took the claimant eight years and in the second, nine years before the right to compensation was sought to be enforced. Its non-jurisdictional character was stressed anew in *Victorias Milling Co., Inc. v. Workmen's Compensation Commission*, announced less than two months later. To the same effect are later cases likewise of 1968 vintage. We have had occasion this year to rule similarly." [11] No discussion need be made of the third alleged error,

being a question of fact, the determination of which by the Workmen's Compensation Commission is to be respected. The fourth alleged error as to the effect of a tie vote is likewise unavailing. A recent work on the Workmen's Compensation Act discusses the matter thus: "Any party in interest may seek the reconsideration of the decision or order of a member of the Commission by the Commission en banc by filing a motion or petition for reconsideration within ten (10) days from receipt of said decision or order. Upon the filing of a motion or petition for reconsideration, the Commission en banc shall resolve the same. Two affirmative or negative votes shall decide the appealed case. In case of a tie vote, the case shall be calendared for another voting by the Commission en banc, and if this second vote again results in a tie, the original decision or order shall be deemed affirmed. As provided for in Sections 2 and 3 of Rule 17, the rules for the format of the motion or petition for reconsideration and that for extension of time to file said motion or petition in the Commission level is practically the same as that in the regional level." [12]

WHEREFORE, the award in favor of the private respondents, as set forth in the decision of the then Associate Commissioner Sanchez of July 15, 1963, is affirmed. With costs against petitioner.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Ruiz Castro, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] The private respondents are: Jovita Lozano Vda. de Garcia, Rodulfo Garcia, Angelita Garcia, Maria Garcia, Emilio Garcia, Jr. and Corazon Garcia.

[2] L-19124, November 18, 1967, 21 SCRA 924.

[3] Decision, Appendices of Decision and Resolution for Brief of Petitioners, pp. VIII to IX.

[4] Ibid, pp. X to XI.

[5] L-19124, Nov. 18, 1967, 21 SCRA 924.

[6] Ibid, p. 932.

[7] 1A Larson, The Law of Workmen's Compensation, 708 (1970).

[8] 51 SE 2d 889 (1949).

[9] 1A Larson, The Law of Workmen's Compensation, 709 (1970).

[10] L-26173, October 31, 1969, 30 SCRA 218 citing Manila Railroad Co. v. Perez, L-20171, June 29, 1965, 14 SCRA 504; Nat. Dev. Co. v. Ayson, L-23450, May 24, 1967, 20 SCRA 192; Nat. Dev. Co. v. Rongavilla, L-21963, Aug. 30, 1967, 20 SCRA 1172; Victorias Milling Co., Inc. v. Workmen's Compensation Commission, L-25640, March 21, 1968, 22 SCRA 1215; Pampanga Sugar Mills v. Vda. de Espeleta, L-24073, Jan. 30, 1968, 22 SCRA 325; Surigao Consolidated Mining Co., Inc. v. Workmen's Compensation Commission, L-26077, May 27, 1968, 23 SCRA 820; Manila Railroad Co. v. Rivera, L-23021, May 29, 1968, 23 SCRA 922; San Miguel Brewery v. Vda. de Joves, L-24258, June 26, 1968, 23 SCRA 1093; Victorias Milling Co., Inc. v. Dadivas, L-24985, March 27, 1969, 27 SCRA 413.

[11] Ibid, pp. 224-225.

[12] Pucan and Besinga, Comments and Annotations on the Workmen's Compensation Act, 519 (1971).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.