

## **OSHI v Alteo Agri Ltd**

**2025 IND 11**

### **Cause Number 26/22**

#### **In the Industrial Court of Mauritius (Criminal side)**

**In the matter of:**

**OSHI**

**v.**

**Alteo Agri Ltd**

### **Judgment**

Accused being an employer is charged under Sections 5(1) & 85(1)(a) and 94(1) (i) (vi) of the Occupational Safety and Health Act – Act No.28 of 2005 coupled with Section 44(2) of the Interpretation and General Clauses Act with unlawfully:

1. failing on or about the 24<sup>th</sup> day of May 2018 to ensure so far as is reasonably practicable, the safety and health at work of one of its employees namely one Beebee Sahidah Sumtally who sustained chemical injury to her right eye while she was manually spreading cement powder in the furrows of the sugarcane field at Trois Ilots, Olivia.
2. failing on or about the 25<sup>th</sup> day of May 2018 to forthwith notify the Director, Occupational Safety and Health by the quickest practicable means of an accident arising out of work which occurred in the sugarcane field at Trois Ilots, Olivia on 24<sup>th</sup> May 2018 and as a result of which accident one of its

employees, namely one Beebee Sahidah Sumtally sustained chemical injury to her right eye which necessitated her admission to hospital for more than 24 hours.

The particulars of the charges provided by the Prosecution upon request of the Defence are given *verbatim* below:

1. *Beebee Sahida Sumtally, field worker was manually spreading cement powder (Lafarge Cement) in the furrows of Trois Ilots Sugarcane field when the cement powder blew into the right eye of Mrs. Beebee Sahida Sumtally.*
2. *According to her medical certificate, Mrs. Beebee Sahida Sumtally sustained chemical injury to her right eye.*
3. *According to the Material Safety Data Sheet of (Lafarge Cement), safety goggles should be used to protect the eyes during the use of cement powder.*
4. *No safety goggles were provided to Mrs. Beebee Sahida Sumtally by the employer at time of accident.*
5. *After the accident, safety goggles were provided to field workers involved in the spreading of cement powder.*
6. *The employer failed to forthwith notify the accident by the quickest practicable means to the Director, Occupational Safety and Health.*

The Accused through its representative, Mr. Arvind Sooknauth in his capacity as Safety and Health Officer, has pleaded not guilty to both counts and has retained the services of Counsel at its trial.

The case for the Prosecution rested solely on the evidence given by Mrs. Tina Ramsurrun-Baznauth in her capacity as Occupational Safety and Health Officer while no evidence was adduced on behalf of the Defence.

Mrs. Tina Ramsurrun-Baznauth in her capacity as Occupational Safety and Health Officer enquired into an accident at work which occurred on 24.5.2018 at a sugarcane field situated at Trois Ilots, Olivia whereby Mrs. Beebee Sahidah Sumtally sustained chemical injury to her right eye as per the medical certificate produced namely Doc. A. The latter reveals that she was admitted to hospital on 24.5.2018

and was discharged on 26.5.2018 on the ground that she was suffering from “*Chemical Injury Right Eye*”.

Her enquiry revealed that on the material day, Accused’s employee namely Mrs. Sumtally was manually spreading cement powder in the furrows of the sugarcane field at Trois Ilots, Olivia when the cement powder got into contact with her right eye. The accident happened on 24.5.2018 and it was notified to the Director Occupational Safety and Health on 30.5.2018. The cement that was being used originated from “*Lafarge Ciments*” société.

As per the usual practice, employees were required to tie a piece of cloth around their waists and to fill the cloth with cement powder and to spread the cement powder along in the furrows. The enquiry has revealed that it was after the accident meaning after the cement powder or cement dusts had got into contact with her right eye, that she used a piece of cloth which she had tied around her forehead to wipe her eyes.

In the course of her enquiry, she took two photographs of the locus of the accident on 7.6.2018 namely about two weeks after the accident as per Docs.B1 and B2. The first photograph (Doc. B1) showed the sugarcane field and the furrows where Mrs. Sumtally was spreading cement powder at the time of accident. The second one (Doc. B2) showed the same sugarcane field with an empty cement bag.

She received a copy of the report of Mr. Arvind Sooknauth in his capacity as safety and health officer namely an Accident Investigation report. She also received the material safety data sheet for cement (hereinafter referred to as “MSDS”) and the risk assessment from the accused employer (all three collectively as per Doc. C). There was no work activity that was carried out at the time of her investigation and empty bags of cement from “*Lafarge Ciments*” société were observed in the field. On 5.10.2020, she recorded a Defence statement under warning from Mr. Arvind Sooknauth, the representative of accused company, as per Doc. D wherein he denied liability in relation to both counts. However, Mr. Arvind Sooknauth, did not depone as to the truth of his statement in Court nor as to the truth of his Accident Investigation report (Docs. D&C) inasmuch as no evidence was adduced by the Defence after the close of the Prosecution case.

After her enquiry, she drew up a report in October 2020 which she did not produce as she was not an expert. According to her, the chemical injury sustained

by Mrs. Sumtally meant that the chemical was cement powder or cement dusts although no such mention was made in the medical certificate which wrote "*Chemical Injury Right Eye*" (see- Doc. A.).

According to the MSDS for cement provided by "*Lafarge Ciments*" société and submitted by the accused employer to the Ministry, the personal protective equipment hereinafter referred to as "P.P.E." that should have been provided while using cement, were safety goggles. At the time of accident, Mrs. Sumtally was not provided with safety goggles but only with safety gloves, rubber boots and a disposable mask. It was only after the accident that safety goggles were provided.

The accident occurred at about 10.15 hours and Mrs. Sumtally although being issued with a memo, continued to work and then went home afterwards. It was only in the afternoon of the material day which was a Thursday that she went to the Dispensary of Bel Air and then she was admitted to Moka Hospital. The enquiring officer admitted that she could not say what the injured person might have done or what she could have put into her injured eye to heal or cure as to what happened.

But her enquiry revealed that cement powder which is a chemical went into the eye of that worker during working hours and the said accident was reported immediately to Mrs. Sumtally's Supervisor. The notification was made by the accused employer and which was submitted 6 days after the accident and it mentioned that the cause of the accident to be the contact with cement dust. Investigation was carried out after the notification and it was found that actually cement dust got into contact with the right eye of that worker. The injury referred to in the medical certificate was one of the injuries to be notified immediately/forthwith to the Director, Occupational Safety and Health. Such notification did not require to be done after 24 hours as it falls under the 11th schedule. Mrs. Sumtally was discharged from hospital on a Saturday and the time of discharge was not specified and she resumed work on the Monday. It was thus, only as from that day, Monday, that the accused company was made aware of the exact reason of the admission of that worker and within 2 days, that is, on Wednesday, the Accused notified the Ministry.

She could not say whether the circumstances of the accident as revealed by her were different from that of the Accused as per its Defence statement (Doc. D). But she did not agree that according to the internal enquiry of Accused, the cement

powder or cement dusts got into her right eye when she cleaned or rubbed her face with the piece of cloth tied around her forehead and in that respect wearing goggles or not would have made no difference. The reason being that the enquiry revealed that it was only after the cement powder which she was spreading went into her eye, only after that, she cleaned her face with the piece of cloth tied around her forehead. Besides, according to her, had Mrs. Sumtally been wearing safety goggles, even if she wiped her face with her mask on, no cement powder would have gone into her eye. She again maintained that if she was provided with safety goggles, cement powder would not have got into her eye.

The Defence did not adduce any evidence in Court.

I have given due consideration to all the evidence put forward before me and the submissions of learned Counsel for the Defence.

First and foremost, no witness for the Prosecution confirmed the version of the enquiring officer namely Mrs. T. Ramsurrun-Baznauth in Court and her conclusion as to the cause of the accident namely the victim not wearing goggles and the remedial action to be taken like goggles to be provided to the workers cannot be relied upon, as she is not an expert inasmuch as her report following completion of her enquiry, was not produced in Court upon objection taken on that ground by learned Counsel for the Defence.

She did not witness the accident and when she went to the locus about two weeks after the accident took place, she did not witness how the work was being done, but she only saw the furrows and empty bags as per the photographs taken by her. She did not adduce any evidence as regards the system of work put into place by the accused employer commensurate with the ongoing in-house trainings given to employees following the risk assessment done prior to the accident, so that it can be inferred that at the material time, the system of work of Accused was unsafe. In the same breath, at no time she stated in Court that the risk assessment was not a sufficient and suitable one because the risks to injury were not identified for the activity that was being carried out by the injured person at the time of accident viz. spreading cement powder manually in the furrows of the sugarcane field.

More importantly, she did not explain the circumstances of the accident namely how the cement powder got into the right eye of the employee. But she rested

content in saying that it was only after the cement powder or cement dusts had already got into her eye, that the employee wiped her eyes with the piece of cloth tied to her forehead.

Therefore, there is no conclusive evidence be it expert evidence or otherwise on the basis of which it can be inferred that the system of work of Accused at the material time was unsafe and that the chemical injury sustained by the worker at her right eye was an operating cause of that unsafe system of work.

At this stage, it is relevant to note that as per a MSDS for cement emanating from “Lafarge Ciments” société, while using the cement, as per Doc. C, as far as the protection of the eyes are concerned, the following was stated:

**“Protection des yeux:** *porter des lunettes de protection en cas de risque d’envolées de poussières ou en cas de risque de projection de poudre ou de pâte dans les yeux.”*

Now as per the risk assessment carried out prior to the accident in 2017 (Doc. C), spraying of cement in furrows was done with due consideration to the wind direction. Further, in order to avoid back injury due to repetitive bending, cement bags of 25 kg were to be used instead of 50 kg. Further, all field supervisors should have to ensure that field workers adopted safe lifting techniques and carried quantities according to individual capacity and to have ensured strict supervision in the use of close fittings goggles. Besides, all field supervisors should have to ensure implementation of all established safe work procedures as per in-house trainings provided. Moreover, they should have to consult the MSDS or labelling on containers of chemicals and operating instructions manual of newly purchased machines before using. Those responsible for action were to be Area Managers, Field Supervisors/ Safety and Health Officer.

It is of paramount importance to note that the injured person did not depone – (i) as to how the accident happened following the ongoing training that she had received in conformity with the risk assessment done by the Accused prior to the accident, (ii) as to when to use close fittings goggles which required strict supervision (see- Doc. C) and (iii) how they were supplied whether on demand by her or were provided to her by her Superiors routinely.

Nor any witness deposed as to the absence of training being dispensed in relation to the use of goggles. I shall equally not rely on the Accident Investigation report drawn by Mr. A. Sooknauth in line with his out of Court statement as he was not called by the Defence to depone as to the truth thereof although he was present in Court.

Further, no evidence was adduced on behalf of the Prosecution regarding the manner the cement powder was being spread in the furrows by the injured person at the material time, whether in a bending or standing position, for example, below the waist level(so that it did not become airborne) or above the waist level( so that it became airborne), whether by means of a sprayer or only her hands, whether it was windy on that day and the wind direction so that it could be inferred that it was against the risk assessment. Such important fact as to how the spreading of cement powder in the furrows was done in the sugarcane field by the Accused's employee at the time of the accident was completely omitted by the enquiring officer and who did not witness the accident.

Again, no evidence has been led by the enquiring officer that the weather was windy on the material day so that it could be inferred that the cement powder became airborne warranting the use of goggles as per the MSDS of cement and risk assessment. The testimony of the enquiring officer is silent as to whether the injured person had to be supplied with the individual PPEs or they were provided to her on demand as per the training dispensed to her, bearing in mind that as per the risk assessment (Doc. C) prior to the accident, goggles were to be provided under strict supervision. It is beyond dispute that a piece of cloth tied to her forehead at the material time was not a PPE put to her use by the Accused but a straw hat as per the risk assessment. The enquiry did not reveal why the injured person did not use the PPE put to her use be it a straw hat or a pair of goggles in accordance with the training dispensed to her in conformity with the risk assessment (Doc. C) done prior to the accident.

Therefore, there is no conclusive evidence to show that the wearing of goggles were called for on the material day, as the enquiry is silent as regards the manner and the amount of the cement powder that was being spread in the furrows from the cloth containing cement powder tied to the waist of the injured person, the weather conditions on that day, so that it can be inferred that the spreading of cement powder became airborne and the risk assessment was not complied with.

According to the enquiring officer, it stands to reason that, the cement powder having got into the right eye of the employee did not bother her at all, as she did not feel any tingling or highly irritating or painful sensation leading her to wash her said eye straight away with water, rather than wiping it with a non-PPE, that is, the cloth tied around her forehead. Furthermore, the enquiry revealed that she could continue working by spreading the cement powder again in the furrows and going to her place afterwards without any impediment to her right eye which means that the cement powder or cement dusts did not bother her at all in the course of her duty and that her right eye settled by itself like any ordinary dust getting into ones eye and settles afterwards without any treatment needed and as such she did not need treatment, given that she did not use the memo given to her to go to the hospital, but chose to continue working and to go home as usual. Moreover, no witness deposed as to the state of her eye following the accident bearing in mind that there is nothing to suggest that it was the presence of cement powder in her right eye that was the operating cause of the injury to that eye save and except the opinion of the enquiring officer who is not an expert bearing in mind that the medical certificate makes no mention of the presence of cement powder or of cement dusts that caused the chemical injury to her right eye as per Doc. A. Thus, the opinion of the enquiring officer again cannot be relied upon inasmuch as she is not an expert.

Therefore, there is no conclusive evidence led by the Prosecution to the effect that the system of work adopted by the Accused at the material time was unsafe following the risk assessment done by it about one year prior to the material day. Further, it is doubtful as to whether there was any injury at all sustained by Mrs. Beebee Sahidah Sumtally at the material time or just a mere discomfort to her right eye at the workplace of Accused during working hours, so that forthwith notification to the relevant authority by the Accused would have been warranted.

For all the reasons given above, I am unable to find that the Prosecution has discharged its burden of establishing its case beyond reasonable doubt that the system of work adopted by the Accused at the material time was unsafe and that there was an actionable accident namely injury to the said employee warranting forthwith notification to the relevant authority namely the Director, Occupational Safety and Health by the Accused (see - **The DPP v Flacq United Estates Ltd [2001 SCJ 301]**). On that score, there is no need for the Accused in order to be exempted from liability, to establish on a balance of probabilities that it was not



reasonably practicable for it to do more than what it has already done (see - **Talbot Fishing Co Ltd. v Ministry of Labour & Industrial Relations (Occupational Safety and Health Inspectorate)** [\[2006 SCJ 76\]](#)).

I, accordingly dismiss the information against the Accused in relation to both counts.

**S.D. Bonomally (Mrs.)** (*Vice President*)

**7.3.2025**