

# OSHI v China State Construction Engineering Corporation Limited

2025 IND 12

## THE INDUSTRIAL COURT OF MAURITIUS

(Criminal Side)

In the matter of:-

CN 147/2024

OSHI

v.

China State Construction Engineering Corporation Limited

### SENTENCE

1. The Accused company is charged for having failed to ensure, so far as is reasonably practicable, the safety, health and welfare at work of one of its employees in breach of section 5(1), coupled with section 94(1)(i)(vi), of the Occupational Safety and Health Act 2005 (OSHA). Following its guilty plea, the Accused now stands convicted.

2. It came out in evidence in the course of the hearing that on 13 June 2019, an accident at work occurred at the Accused's construction site in Côte d'Or whereby one Ding Hongguang, who was in the Accused's employment as Quality Supervisor, died following craniocerebral injuries **(Documents A and B)**. The enquiry revealed that steel tubes, attached with chains to a telescopic tower crane, suddenly fell off from a height of about 25 metres during transfer. The tubes landed on the deceased who passed away. It was found that the employer had not provided for a safe procedure of work for the transport and the unloading of tubes by crane, and had thus failed in its duty to ensure the safety of its employee.

3. The representative of the Accused company has admitted the breach of the law in Court, and apologised. The Accused's representative added that despite safety measures taken, the Accused could not prevent the accident. He pleaded for leniency from the Court.

4. In **General Construction Company Limited v. Occupation, Safety and Health Inspectorate, Ministry of Labour, Industrial Relations and Employment (2020) SCJ 40**, the Supreme Court highlighted that *"the legislator's intent behind OSHA is to ensure the safety of workers and OSHA therefore sets out the responsibilities of the employer in that regard."*

5. According to section 5(1) of the OSHA:

***"5. General duties of employers***

*(1) Every employer shall, so far as is reasonably practicable, ensure the safety, health and welfare at work of all his employees.*

*...".*

6. By virtue of section 94(1)(i)(vi) of the OSHA, any person who contravenes a provision of the Act shall commit an offence. As employer, the Accused has rendered itself liable *"to a fine not exceeding 75,000 rupees and to imprisonment for a term not exceeding one year"*, pursuant to section 94(3)(b) of the OSHA.

7. In **Mosaheb v. The State (2010) SCJ 150**, the Supreme Court held that *"the sentence in each case has to be determined in accordance with the facts and circumstances surrounding the commission of the particular offence and the other relevant personal circumstances of an accused party."* Moreover, in **Hossen v. The State (2013) SCJ 367**, the Supreme Court stressed the need to apply the principle of proportionality to reach the appropriate sentence in any given case – *vide* also **Lin Ho Wah v. The State (2012) SCJ 70**.

8. I have considered all the facts and circumstances of this case as borne out on record. I bear in mind the guilty plea of the Accused and the remorse expressed by the Accused's representative in Court. I cannot, however, be oblivious to the fact that someone lost his life as a consequence of the failure of the Accused to provide a safe place of work. Moreover, the certificate of previous convictions of the Accused

**(Document X)** shows a lack of respect for occupational safety and health legislation. Indeed, the Accused has been convicted several times in the past, albeit not for cognate offences.

9. In the light of all these factors, I sentence the Accused to pay a fine of Rs 20,000. The Accused shall also pay Rs 200. as costs.

**11 March 2025**

**M. ARMOOGUM**

**Magistrate**