

OSHI VS PADARUTH BHAGWAT PARSAD

2023 IND 33

THE INDUSTRIAL COURT OF MAURITIUS

Cause Number: 86/2022

In the matter of:-

OSHI

VS

BHAGWAT PARSAD PADARUTH

SENTENCE

In the present case, following a hearing after a guilty plea entered by the Accused, the latter stands convicted for two offences, namely:-

- (i) Under Count I for failing to ensure, so far as is reasonably practicable, the safety, health and welfare at work of its employees in breach of sections 5(1), 94(1)(i)(vi) and 94(3)(b) of the Occupational Safety and Health Act 2005;
- (ii) Under Count II for failing to send a report of the accident within seven days in breach of sections 85(1)(b), 94(1)(i)(vi) and 94(3)(b) of the Occupational Safety and Health Act 2005, coupled with Regulation 4 of the Occupational Safety and Health Regulations 2020.

An accident occurred at the factory of the Accused situated at Matanne road, Bois Cheri on the 18th March 2020. Mrs Veerapen Chetty, Ag Divisional Occupational Safety and Health officer, enquired into the case. She testified that one Mr Gooroodeo Mohadawo sustained injury whilst he was cutting a wood pellet on a circular sawing machine at the Accused's factory. This was due to the fact that there were certain things missing on the circular sawing machine like the riving knife and a guard on the dangerous part of the machine. There was no sufficient risk assessment carried out by the employer, the Accused. She produced photos of the incident and the medical certificates of the injured person.

The version of the Accused is contained in his statement given to Mrs Veerapen Chetty and through his version from the dock in Court. He admitted the charges against him and tendered his apologies.

The penalty applicable in relation to the present offence as contained in section 94(3)(b) of the Occupational Safety and Health Act is a fine not exceeding 75,000 rupees and to imprisonment for a term not exceeding one year.

The general principles in relation to sentencing can be gathered in the dicta in the case of **A. MOSAHEB VS THE STATE (2010) SCJ 150**, namely 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*”. Also, each case depends on its own facts and the sentence must be proportionate to the case. **(RE: HOSSEN VS THE STATE (2013) SCJ 367)**.

The present case falls under the Occupational Safety and Health Act (OSHA) and it must be remembered 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*”. **(RE: GENERAL CONSTRUCTION COMPANY LIMITEDv OCCUPATION, SAFETY AND HEALTH INSPECTORATE, MINISTRY OF LABOUR, INDUSTRIAL RELATIONS AND EMPLOYMENT).**

I have taken note of the circumstances pertinent to the present case. The offences are serious ones, resulting in injuries on a person. In the present case, the Mr Mahadawo sustained a traumatic brain injury. This calls for concern. It is important that the right signal be sent to society acting as a deterrent to non-compliant employers.

On the other hand, I have borne in mind that the Accused pleaded guilty and is at his first encounter with the Law. The Accused made a clean breast of events and acknowledged the seriousness of the case. These constitute important mitigating factors.

In view of the above, after taking into account the nature of the offences as well as the mitigating and aggravating circumstances of the case, I find that a fine will meet the ends of justice.

I therefore order that the Accused be sentenced to a fine of Rs 25,000 under Count 1 of the Information and a fine of Rs 5,000 under Count 2 of the Information.

I further order the Accused to pay Rs 200 as costs.

Sentence delivered by: M.Gayan-Jaulimsing, Ag President, Industrial Court

Sentence delivered on: 25th May 2023