OSHI v Best Construct Co. Ltd

2025 IND 76

Cause Number 50/23

In the Industrial Court of Mauritius
(Criminal side)

In the matter of:

OSHI

v.

Best Construct Co. Ltd

Judgment

Accused being an employer is charged under Section 5(1) and Section 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 – Act 33 of 1974 with unlawfully failing on or about the 11th day of February 2020 to ensure so far as is reasonable practicable, the safety and health of its employees at work when one Ravind Ranglal sustained injury to his thumbs while he was involved in the lifting of a breaker hammer at his site of work at Sokha Road, Plaine des Roches.

The Accused's authorised representative pleaded not guilty to the information and was assisted by Counsel.

The Prosecution's case:

1. Miss Pooja Tajoo gave evidence in Court in her capacity as Occupational Safety and Health Officer.

She enquired into an accident at work which occurred on 11 February 2020 at the site of Best Construct Co. Ltd situated at Sokha Road, Plaine des Roches when Mr. Ravind Ranglal in his capacity as Assistant Plumber sustained injuries. She went to the locus of the accident on 28.2.2020 when she took a set of 4 photographs (Docs. B1-B4). She received a copy of a risk assessment dated 11.11.2019 from Accused (Doc. C). She recorded a statement under warning from an authorised representative of Accused namely Mr. Chandradeo Mahadoo in his capacity as Environmental Safety and Health Officer on 22.2.2021 (Doc. D) wherein he admitted the charge proffered against Accused.

It is common ground as per the evidence of Miss Tajoo (the enquiring officer) and the unsworn defence statement (Doc. D) of Accused's representative (Mr. C. Mahadoo) regarding the following:

1. Circumstances of the accident. On 11.2.2020, the Operator of an excavator was lifting the hammer of the excavator by means of its bucket. Mr. Ravind Rangal, employed as Assistant Plumber by Accused, was requested to place a rock underneath the hammer to facilitate lifting. However, when the hammer was lowered onto the rock, it rolled over, crushing both of Mr. Ranglal's thumbs and he sustained soft tissue amputation of bilateral thumbs as a result (as per the medical certificate produced *vide* Doc. A).
2. The photographs taken (Docs. B1-B4) show the place where the accident took place, the hammer and excavator involved in the accident.
3. Accused did not carry out a risk assessment regarding the work being done by Mr. Ranglal at the time of accident.
4. The procedure adopted at the time of accident was unsafe.
5. No safe system of work meaning no safe working procedure concerning the work being carried out at the time of accident was established and the weight of the hammer was about 1 ton.
6. It was not the duty of the Assistant Plumber (Mr. Ranglal) to help the Operator of the excavator in the lifting of the hammer.
7. There was no helper to assist the Operator of the excavator.

Thus, the charge as well as the findings of the enquiring officer as per her report dated 26.1.2021 (Doc. E) pertaining to that charge were admitted by Mr. C. Mahadoo the authorised representative of the Accused (Doc. D).

According to her, to prevent the accident, a safe system of work should have been put in place after an assessment of the risks involved for that kind of work, for example, lifting the hammer by means of the bucket was an unsafe act.

Accused could have made use of proper chains, slings and shackles to secure the hammer and could have lifted it in a controlled manner by means of forklifts or cranes following a proper planning ensuring that the load was properly and tightly attached, secured and positioned.

Under cross-examination, she did not agree that since it was not the duty of the person who was injured to do what he did, the question of having a safe means of doing the work did not arise.

She explained that if a proper assessment was made and then a safe system of work established, it would have been found that a proper training would have had to be given to the Operator and to a helper to carry out such work which was not to be carried out by the Assistant Plumber. There should have been proper supervision. If a safe system of work was established, the duties would have been clear as to who does what on site. Then, there would have been a trained helper on site to do that job in the manner it was to be done. She agreed that the injured person was not supposed to do the work he did. But the risk assessment did not cover the work which was performed at time of accident which meant that proper assessment was not even done. Had an assessment been done to see the flow of how the work was being performed, Accused would have had already found that after the work, there was the need to lift that hammer and bring it back to be stored. Accused would have had identified that risk then and thereafter, it would have done a safe system of work. But the risk assessment was very general and did not cover tasks' base.

If the risk assessment had been based on tasks, it would have been identified that such a task was supposed to be carried out. Then, Accused would have carried out a training and identified who had the responsibility to do what. The injured person was requested to place a rock underneath the hammer by the Operator, but there was no supervision at time of accident. The Operator did not have the right to ask him to do that. Had there been supervision at the material time, the Operator

himself would not even have asked the injured person to do that. Again, had there been an established procedure, the workers would have known that it was not their duties and there would have been supervision. The workers would have had their own individual responsibilities and there would have been someone to supervise them to prevent that kind of accident. The procedure would have mentioned supervision and training but there was no procedure.

2. Mr. Ravind Ranglal (the injured employee) gave evidence in Court.

On 11.2.2020, he was working for the Accused at its site at Sokha Road, Plaine des Roches. He was working as Plumber and which he had done for about 3 years. He was asked by the Operator of the excavator to put a rock underneath its bucket to facilitate the lifting of its hammer which slipped while the rock was still in his hands and it fell on the rock so that his hands got crushed. It was his working time and at that time there was nobody else and he was there. He admitted that it was not his job to put a rock underneath but he was asked by the Operator to do so and he helped him as there was no one else available. He did not get any training for that job.

3. Mr. Khurwolah Mohazam (the excavator Operator) gave evidence in Court.

On 11.2.2020, he was working for the Accused as Operator of the excavator in order to dig trenches and leveling the land amongst others so that he did everything. He had been working for the Accused for about 4 years. On the material day, he was instructed to do the work by his foreman. Mr. Ranglal got injured as he did not understand well what he had asked him to do. He asked him to let go of that rock underneath, but he held that rock with his hands and while putting the rock underneath, his hands got crushed with the breaker hammer. There was no need for him to place his hands down. They worked as a family so that each one helped each other. Because there was a risk in doing that kind of work, he asked him to let go of that rock down underneath and he misunderstood and put his hands down to place the rock underneath.

The Defence's case:

The representative of the Accused, Mrs. Emmanuel Nuncy Murden, in her capacity as HR Manager gave evidence in Court.

The Operator of the excavator had no authority to ask the injured person to do the task he asked him to perform at the material time and Mr. Ranglal as well should not have accepted to do a job which was outside his mandate. Moreover, the Accused was not aware of that fact. Each employee had specific tasks and the Accused had never authorized its employees to do the work of other employees in a family spirit.

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, I find it relevant to have recourse to section 5(1) of the Occupational Safety and Health Act 2005 which provides:

> *"**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."*

As per the information, the words "*reasonably practicable,"* are not used but the words *"reasonable practicable,"* are used instead. Given that there is no comma between the words *"reasonable"* and *"practicable"*, there is nothing to impute that those words have to be construed as two separate elements of the offence, but that it was simply a typing error so that instead of the word *"reasonably"* being used, the word *"reasonable"* was used, because the word *"reasonable"* in such a circumstance is deemed to qualify the word *"practicable"*. Further, as there is nothing to suggest that the Accused was in any way misled or prejudiced in the preparation of its defence, I *proprio motu* amend the information so that the word *"reasonable"* now reads *"reasonably"* pursuant to Section 73 of the District and Intermediate Courts (Criminal Jurisdiction) Act for the sole purpose of enabling it to tally either with a conviction or an acquittal (*vide* – **Venkiah v R** [1984 MR 62]).

Now, the accused party through its authorised representative had admitted the charge in that it failed so far as is reasonably practicable to ensure the safety and health of Mr. Ranglal who got injured following an accident at work, as there was no working procedure in place for the specific work he did at the material time and that the risk assessment Accused carried out prior to the accident, did not cover the work

that Assistant Plumber was asked to do by the Operator of the excavator at the material time namely the placing of a rock underneath the excavator's bucket to facilitate the lifting of its breaker hammer.

Although the workers should not do work which they were not supposed to do, does not necessarily mean that the system of work was safe like in the present context where there were no workers recruited to do that kind of job as there was no procedure in place for doing that specific work at the material time. Thus, any available worker had to do it although it was outside his mandate for which he was not trained like in the case of Mr. Ranglal which clearly shows that the system of work for that kind of job was unsafe and which led to the accident resulting in injury being caused to Mr. Ranglal who was only an Assistant Plumber. This is in line with the unrebutted testimony of the Operator of the excavator that such particular work was risky and it was the reason why he had asked Mr. Ranglal to let go of the rock underneath the excavator's bucket to facilitate the lifting of its hammer and which he misunderstood and was in the process of placing his hands underneath to place the rock, when he was injured by the hammer which slipped and fell onto his hands. Thus, I agree with the contention of the enquiring officer that it had not been established how that particular work was to be done and by whom as no risk assessment was done by the Accused in that regard and there was no training dispensed bearing in mind the unrebutted testimony of the Operator that they worked as a family helping each other. Had there been training given to the workers doing that kind of job, the accident would not have happened because a trained worker would have had hardly misunderstood instructions given to him in the performance of that kind of work. There was no procedure put in place to show within whose scope of duty it was to do that precise job which is in line with Accused's own admission as per its defence statement (Doc. D). It is apposite to note that the primordial duty of the Court is to ascertain whether the system of work adopted by the Accused was a safe one and not the negligence of the employee (see - **The DPP v Flacq United Estates Ltd [2001 SCJ 301]**).

For all the reasons given above and in the light of Accused's own admission (Doc. D), I find that Mr. Rangal was injured following an accident at work as a result of an unsafe system of work of Accused, because of an absence of a working procedure put in place to show within whose scope of duty it was to do that kind of work he was asked to do by the Operator of the excavator at the material time. I, accordingly, find Accused guilty as charged.

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

7.11.2025