

OSHI v Axess Limited

2024 IND 74

THE INDUSTRIAL COURT OF MAURITIUS

(Criminal Side)

In the matter of:-

CN 76/2022

OSHI

v.

Axess Limited

SENTENCE

1. Further to its guilty plea, the Accused company has been convicted 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).

2. A hearing was held into the circumstances of this case. It came out in evidence that on 17 December 2019, an accident at work occurred in the oil store of the Accused's workshop situate at Motor City, Bagatelle, whereby one Desen Cannoosamy, who was employed as mechanic, sustained low back injury. He was admitted to hospital for treatment and was discharged on 19 December 2019. He was, thereafter, granted one week's leave to recover. The enquiry revealed that, at the time of the accident, there was accumulation of oil on the workshop floor. Paperboards that had been placed on the oil to absorb same slipped and caused the said Desen Cannoosamy to fall and injure his back. Following the accident, remedial action was taken and a proper drainage system put into place to evacuate all accumulated oil.

Photographs showing the before (**Documents B, B1, B2**) and after (**Documents C, C1, C2**) the accident state of the workshop were produced by the prosecution.

3. The Accused's representative tendered apologies on behalf of the company in Court. He explained that the injured person was immediately attended to by the company following the accident. Mr. Cannoosamy still works for the company. No similar incident has happened since then.

4. Learned Counsel appearing for the Accused highlighted the mitigating factors in this case and invited the Court to impose a minimal fine.

5. 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."*

6. 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.

...".

7. By virtue of section 94(1)(i)(vi) of the OSHA, any person who contravenes a provision of the Act shall commit an offence. Pursuant to section 94(3)(b) of the OSHA, as an 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."*

8. 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**.

9. I have considered all the facts and circumstances of this case as borne out on record. I find that this accident at work could have been avoided had proper safety measures been in place at the Accused's workshop. However, the Court has been informed that remedial action has been taken and that no similar incident has occurred. I note that the Accused in borne on record for offences which are not cognate and which date back to 2010 **(Document X)**. I shall disregard them. I also note that there has been a timely guilty plea and remorse expressed in Court.

10. After due regard to all the above, I sentence the Accused to pay a fine of Rs 5,000. The Accused shall also pay Rs 200. as costs.

12 December 2024

M. ARMOOGUM

Magistrate