

**OSHI v Medine Limited**

**2022 IND 35**

**CN118/16**

**THE INDUSTRIAL COURT OF MAURITIUS**  
**(Criminal Side)**

**In the matter of:-**

**Occupational Safety And Health Inspectorate**

v/s

**Medine Limited**

**JUDGMENT**

The Accused Company stands charged under the Amended Information with one Count of Failing To Ensure The Safety, Health, And Welfare At Work Of Its Employees, contrary to ss. 5(1) and 94(1)(i)(vi)(3)(b) of the Occupational Safety And Health Act 2005 [Act No. 28 of 2005] (hereinafter referred to as OSHA) coupled with s. 44(2) of the Interpretation And General Clauses Act.

The Accused Company pleaded Not Guilty to the charge and was assisted by Learned Defence Counsel.

The Prosecutor conducted the case for the Prosecution.

The Proceedings were held partly in English and partly in Creole.

**The Prosecution Case**

It was the case for the Prosecution that on or about 30-07-13, in the District of Black River, the Accused Company as represented by its Director did unlawfully fail to ensure so far as is reasonably practicable the safety and health at work of its employees, to wit: Jean Tony Zizi (hereinafter referred to as W3) sustained injuries to his right hand while he was travelling in a trailer (Tip 15) towed by a tractor bearing registration number 2730 AG 95 when the said right hand was crushed in between the front bar of the trailer and the back cabin of the tractor at its place of work at Yemen Deer Farming, Yemen.

### **The Defence Case**

The Accused Company denied the charge in its 02 out-of-Court statements (Docs. E and K), and elected, as was its Right, to adduce no evidence.

### **Analysis**

The Court has duly analysed all the evidence on Record and all the circumstances of the present matter, and the Court has watched the demeanour of all the Prosecution Witnesses with the utmost care.

The Court has also given due consideration to the Submissions of Learned Defence Counsel.

The Court has duly considered all the documents produced in the course of the Proceedings:

- 1) 04 Medical Certificates (collectively marked Doc. A) of W3;
- 2) The Particulars (Doc. B) provided by the Prosecution to the Defence;
- 3) 01 booklet (Doc. C) of 02 photographs (Docs. C1 and C2 respectively);
- 4) 02 letters (Docs. D and J) from the Accused Company addressed to the Permanent Secretary, Ministry of Labour, Industrial Relations & Employment;
- 5) 02 letters (Docs. F and L) from the Permanent Secretary, Ministry of Labour, Industrial Relations & Employment addressed to the National Transport Authority (hereinafter referred to as NTA);
- 6) 01 Report of accident at work (Doc. G) signed by Premsing Seetohul (hereinafter referred to as W2);
- 7) 01 booklet (Doc. H) of 01 photograph (Doc. H1);
- 8) 01 Report of accident at work (Doc. M) signed by Poumalay Poinen Sohoraye (hereinafter referred to as W1); and

- 9) 01 letter from the NTA to the Accused Company made up of 07 pages (collectively marked Doc. N).

**S. 5(1) of the OSHA** provides as follows:

Every employer, shall, so far as is reasonably practicable, ensure the safety, health and welfare of all his employees.

An employer therefore has a statutory duty to ensure, so far as is reasonably practicable, the safety, health and welfare of all its employees.

The Particulars (Doc. B) provided by the Prosecution to the Defence were to the effect that the passageways for vehicles to be driven in the farm were not properly maintained and had V-shaped slopes, and according to the NTA, no person was allowed to travel in the Trailer "Tip 15" (Doc. B).

**Not In Dispute**

It was not disputed that W3 sustained injuries when his right hand was crushed in between the front bar of the trailer and the back cabin of the tractor at his place of work at Yemen Deer Farming, Yemen, on 30-07-13, in the course of his employment.

**Did The Passageways For Vehicles To Be Driven In The Farm Have V-Shaped Slopes?**

It was put to the Accused Company that the portion of land on which the accident occurred was not maintained, which caused the trailer and the tractor to hit against the other, thereby causing injury to W3.

Now, "[i]n a criminal case it is normal to assume that the version that is put to an accused party when recording his or her defence is the very complaint that was made by the victim." (**Marday v The State [2000 SCJ 225]**).

W3 deponed to the effect that his hand got crushed when it went in a "drain", and added that he thought the road was not good.

Jean Michel Albuféra (hereinafter referred to as W5) deponed that although the road was rocky, all the roads they used were correct and were prepared for them to be able to work, and went on

to explain that the speed at which the tractor came, W3 had no time to remove his hand, which got crushed, when the tractor went up a road a bit, and the tractor and the trailer knocked against the other.

Jean Claude Laseringue (hereinafter referred to as W4) explained that W3's hand got crushed when the tractor "verse lors so la main".

At no stage did W3, W4, and W5 mention that the track they were on at the relevant time had V-shaped slopes, and W4 explained that the tracks were properly maintained and the passage prepared.

W2 explained that W3's hand got crushed between the trailer and the tractor, when the tractor came backwards, while moving in the slope.

It is worth noting that W2 confirmed not having been on the locus where the accident occurred, such that W2's testimony as regards the tractor moving backwards whilst moving in the slope cannot, in all logic, be based on W2's own personal observations of the locus.

Be that as it may, W1 explained how she observed on 24-06-15 that the "pathway was not flat. It was stamped with rocks and soils and was inclined in an almost V-shape slope".

Now, given W1's said observations were made on 24-06-15, i.e. about 02 years after the said accident, there is no way for the Court to determine whether the said locus was in exactly the same state as at 30-07-13, bearing in mind also W2 agreed the said Deer Farm was "wild nature".

In support of its case, the Prosecution relied also on (Doc. H (H1)).

The Court however notes that same was taken on 24-06-15 by W1, that is almost 02 years after the said accident, and the Court is therefore of the considered view that the said photograph (Doc. H1) affords no assistance to the Court in the determination of the present matter, given the passage of time, and given there is no way for the Court to ascertain whether the locus was in the same state on 30-07-13 and on 24-06-15.

The Accused Company maintained that maintenance works were carried out to even out the land in question every year, and explained that the natural topography of the land was such that each Driver had to exercise his discretion as to which path was more practicable (Folio 110922 of Doc. K).

In light of all the evidence on Record, and all the factors highlighted above, the Court is of the considered view that there is no concrete evidence on Record from which the Court can reasonably conclude that the locus in question had not been maintained, and had V-shaped slopes, as at 30-07-13, which caused the tractor and the trailer to hit against the other, injuring in the process W3's hand.

**Was Any Person Allowed To Travel In The Trailer?**

In the present matter, it was put to the Accused Company that it let W3 travel in the trailer when it was not authorised to do so (Folio 107082 of Doc. E), meaning that it thereby failed to ensure the safety, health, and welfare of W3.

The principles set out in the Authority of **Marday (supra)**, as highlighted above, find their application to the present issue.

In examination-in-Chief, W3 explained that his hand got crushed in the “drain”.

W3 further stated that he got into the tractor, and whilst the said tractor was in motion, his hand was on the tractor, and when referred to the photograph (Doc. C1), W3 clearly stated that he was in the red vehicle, which is labelled “Tractor” on the said (Doc. C1).

W3 then stated that he was standing “dans tractere, dans corbeille là”.

In cross-examination, upon being shown (Doc. C1), and being asked which vehicle he was in, W3 stated again that he was in the red vehicle, which is labelled “Tractor” on the said (Doc. C1).

W5 and W4 deponed to the effect that W3 was in the trailer at the relevant time.

As per W2, W3 was travelling in the trailer, and his hand got crushed between the trailer and the tractor.

In light of all the above, there is contradictory evidence in the Prosecution case as to whether W3 was in the tractor or the trailer at the relevant time, and the Court is therefore of the considered view that there are doubts which remain in the Prosecution case as to the precise circumstances of the present matter.

Further, it is significant to note that the Representative of the NTA (hereinafter referred to as W8) could give no definite answer as to whether there was anything wrong for agricultural workers to be in the trailer for agricultural activities.

Now, as per the letter from the NTA (Doc. N), produced by W8, it appears that a Special Licence Exemption was granted in relation to the tractor and trailer in the present matter up to 31-12-13.

And the said letter is dated May 2013 (the complete date on the top right hand corner of the said document not being totally legible).

It would therefore appear that there was a Special Licence Exemption in force at the relevant time in relation to the said tractor and the said trailer.

The said letter (Doc. N) specifically makes mention of **Regulation 76(1)** of the **Road Traffic Regulations 1954 [G.N. 97 of 1954]** (hereinafter referred to as the **Regulations**), which reads as follows:

Every motor vehicle kept and used for a specified purpose shall, subject to the requirements of the next succeeding paragraph, be exempted from having to be issued with any licence under Part II and Part VI of the Act.

At no stage was it the case for the Prosecution that the Accused Company had failed to comply with **Regulations 76(2)** of the **Regulations**, or that the said trailer had been used on a public road.

Now, as per **s. 2** of the said **Regulations**, “Act” means “Road Traffic Act”.

Reference is therefore made to Part II of the **Road Traffic Act** (hereinafter referred to as **RTA**), which relates to the registration of motor vehicles and trailers, and more specifically to **s. 18** of the **RTA**, which provides as follows:

#### **18. Exemption from registration**

There shall be exempted from registration—

[...]

(c) trailers used exclusively for agricultural purposes and not used on a road [...].

W8 conceded in cross-examination that the vehicle in question had been exempted by the NTA from registration.

In light of all the above, which evidence was led by the Prosecution, there would appear there was no need for the trailer and the tractor involved in the present matter to be registered with the NTA.

Now, the Court has noted the line of cross-examination adopted by the Defence in relation to W2, as regards whether the accident could have been avoided had W3 held the handrail on the right or left hand side of the trailer.

The Court has also noted the remedial actions taken by the Accused Company after the said accident, by fixing rails on the trailer in order for the Employees to hold onto same when the tractor is in motion (Folio 110922 of Doc. K).

This leads to the reasonable and logical conclusion that there was no such rail on the trailer before the said accident, and also that such measure was a practicable one to ensure the safety, health, and welfare of W3.

Be that as it may, the case for the Prosecution was not based on the absence of handrails on the trailer, but inter alia on the prohibition for persons to travel in the trailer.

In light of all the above, the Court is of the considered view that the contradictions in the Prosecution case have created doubts in the Prosecution case such that the Court cannot determine conclusively whether W3 was duly allowed to travel in the trailer at the relevant time.

**Other Issues**

True it is that the Accused Company conceded that there was no site layout plan (Folio 110923 of Doc. K) and that W2 deponed to the effect that there was no such document. But as rightly pointed out by Learned Defence Counsel, this issue was not part of the Particulars (Doc. B).

In the circumstances, the Court is of the considered view that this was hence not part of the case the Defence had to meet.

The same reasoning applies to the issues raised in Court, by W2, as to the absence of any “warning signs to indicate danger ahead”, and as to demarcated pathways.

The Court has noted that Learned Defence Counsel submitted that the accident occurred on 02-03-13, but as per the Amended Information, the accident occurred on or about 30-07-13.

Be that as it may, the Court is of the considered that this causes no prejudice to the Defence case.

**Conclusion**

In light of all the evidence on Record, all the circumstances of the present matter, and all the factors highlighted above, the Court is of the considered view that there are significant doubts which remain in the Prosecution case given the contradictions highlighted above in the Prosecution case, and the Court therefore finds that the Prosecution has failed to prove its against the Accused Company beyond reasonable doubt, and the case is therefore dismissed.

[Delivered by: D. Gayan, Ag. President]

[Industrial Court]

[Date: 19 July 2022]