

OSHI v Hideaway Garden Restaurant Ltd

2025 IND 28

THE INDUSTRIAL COURT OF MAURITIUS

(Criminal Side)

In the matter of:-

CN 12/2023

OSHI

v.

Hideaway Garden Restaurant Ltd

SENTENCE

1. The Accused has pleaded guilty for having (i) failed to ensure, so far as is reasonably practicable, the safety, health and welfare at work of its employees – breach of section 5(1) and section 94(1)(i)(vi) of the Occupational Safety and Health Act 2005 (OSHA) –, (ii) failed to notify the Director, Occupational Safety and Health of an accident arising out of work by the quickest practicable means – breach of section 85(1)(a) and section 94(1)(i)(vi) of the OSHA – , and (iii) failed to send to the Director, Occupational Safety and Health within seven days a report in the form set out in the Thirteenth Schedule of the OSHA – breach of section 85(1)(b) and section 94(1)(i)(vi) of the OSHA. The Accused stands convicted under the three counts.

2. A hearing was held into the circumstances of the matter. It came out in evidence that on 10 June 2020 one Marie Kelly Elodie Auffray, who was employed by the Accused as helper, sustained electric shock whilst cleaning electric cables and sockets at her place of work situate at Marbella Road, Trianon. Enquiry revealed that the employer had failed to cause an electrical socket outlet to be so located as not to be exposed to water; it was found under a stainless steel sink. That resulted in the

accident. The employee was admitted for treatment at the hospital for one day. Furthermore, the said work accident was not forthwith reported by the employer, nor was a report sent to the Ministry within seven days.

3. The Accused's representative admitted the charges in his out-of-court statement. He gave evidence in Court to the effect that remedial measures were taken following the accident to ensure no recurrence. The restaurant closed down in the year 2023 due to financial difficulties. He apologised on behalf of the Accused.

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. Section 85(1) of the OSHA further provides:

"85. Notification of occupational accidents and dangerous occurrences

(1) Where any employee, as a result of an accident arising out of or in connection with his work, dies or suffers any of the injuries or conditions specified in the Eleventh Schedule, or where there happens a dangerous occurrence specified in the Twelfth Schedule, the employer shall –

(a) forthwith notify the Director, Occupational Safety and Health by the quickest practicable means; and

(b) within 7 days, send a report thereof to the Director, Occupational Safety and Health, in the form set out in the Thirteenth Schedule."

7. A reading of the Eleventh Schedule to the OSHA indicates that this work accident required immediate notification and subsequent reporting to the Director, Occupational Safety and Health in writing, in the form set out in the Thirteenth Schedule. By virtue of section 94(1)(i)(vi) of the OSHA, any person who contravenes a provision of the Act shall commit an offence, and the employer is liable "*to a fine not exceeding 75,000 rupees and to imprisonment for a term not exceeding one year*" under each count, pursuant to section 94(3)(b) of the OSHA.

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.*" 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 the facts of this case as borne out in evidence, and summarised above. By failing to adhere to a safe work procedure and placing an electric socket under a washbasin without ensuring its proper isolation, the Accused has endangered the life of one of its employees. Fortunately, the employee was not seriously injured. Moreover, the Accused has failed to report the matter to the Ministry as required by law. On the other hand, the Accused admitted guilt at the first reasonable opportunity and co-operated with the authorities. Furthermore, the Accused has a clean record. These are strong mitigating elements.

10. In view of all the foregoing circumstances, I sentence the Accused to pay a fine of Rs 4,000. under Count I, Rs 1,000. under Count II and Rs 1,000. under Count III of the information. The Accused shall also pay Rs 200. as costs.

16 April 2025

M. ARMOOGUM

Magistrate