OSHI v The Municipal Council of Beau Bassin-Rose Hill

2025 IND 71

THE INDUSTRIAL COURT OF MAURITIUS

(Criminal Side)

In the matter of:-

CN 173/2017

OSHI

v.

The Municipal Council of Beau Bassin-Rose Hill

JUDGMENT

1. The Accused stands charged for having unlawfully failed, so far as is reasonably practicable, to ensure the safety and health at work of its employees, in breach of sections 5(1) and 94(1)(i)(vi) of the Occupational Safety and Health Act 2005 (OSHA). The Accused has pleaded not guilty to the information.

2. Mr. Mohamed Ryan Fezal Joomun, Principal Occupational Safety and Health Officer, who enquired into this work accident gave evidence to the effect that on 06 January 2015 one Zahiruddin Khan Rosanally, who was employed by the Accused as refuse collector, fell off a scavenging tipper lorry and sustained head injury. On the day in question, Mr. Rosanally was part of the team involved in the collection of refuse along Swami Dayanand Road, Beau Bassin. At around 06.30 hrs, waste in the lorry box had reached a height of about 30cm from the top of the lorry's side walls. Mr. Rosanally was walking on the refuse so as to compact it – to allow space for more waste – with a view to limiting the number of trips to the dumping ground.

3. Mr. Joomun added that the lorry box was some 2.95 metres above ground level. At the time of the accident, the lorry was stationary. The scavenging team consisted

of a driver/supervisor and several refuse collectors. It was common practice for refuse collectors to walk on the garbage to compress it. The witness affirmed that this was not appropriate as the height was more than 2 metres. He asserted that there were no fall prevention measures taken by the employer, who thus failed to ensure the safety of its employees. According to Mr. Joomun, the employees should not have been allowed to walk on the refuse during collection. The risk assessment made no mention of any risk associated with walking on refuse for compacting purposes. Following the accident, refuse collectors were instructed not to walk on garbage for compacting purposes.

4. Under cross-examination, Mr. Joomun gave the lorry's main specifications. He explained that the refuse collectors were stacking the lorry so as to complete their task faster. According to his enquiry, the practice of walking on refuse for compacting has been ongoing for years and this was to the knowledge of the Accused's management.

5. Mr. Zahiruddin Khan Rosanally, thereafter, testified. He explained that, on the day of the accident, the scavenging team was composed of 7 to 8 persons, including the driver. Mr. Pultee and himself were in the lorry box whereas the other refuse collectors were on the road. The latter were picking up bins from the side of the road and passing them on to the two collectors posted in the lorry, who emptied them before returning same to their fellow colleagues on the road. Mr. Rosanally stated that whilst he was unloading bins, he slipped on wet branches and fell off the lorry from a height of some 2 metres. According to Mr. Rosanally, this is the system of work he had been using since he joined this work some 18 years ago. He was informed of the danger of sitting or walking on the heap of waste in the lorry box, but was never told to stop the ongoing practice. It was not practicable for the supervisor Mr René to check on the refuse collectors as he was also the driver of the lorry and had to remain behind the wheel.

6. Mr. Kavee Pultee, who was acting as refuse collector inside the lorry box alongside Mr. Rosanally, supported the latter's version in Court. The witness confirmed the practice of walking on the heap of waste for compacting purposes. He confirmed that the supervisor remained at the driver's seat on the material day whilst the refuse collectors were on the road or inside the lorry box. Mr. Pultee asserted that there was no barrier fitted to the lorry in order to prevent the refuse collectors from falling off the box. He had been using the same system of work for the past 12 years and was never told that it was wrong.

7. Mr. Arshad Torap, Senior Safety and Health Officer, testified on behalf of the Accused. He was adamant that there was a safe system of work put in place by the Accused regarding collection of waste. According to him, the refuse collectors were duly explained how to securely perform their task. The latter were expressly told not to walk on the waste because of the risks occasioned by sharp objects, broken bottles, used needles and the like. The training sessions were carried out in creole. The management of Accused was never informed that the instructions were not being followed by the refuse collectors, and that the latter had developed their own practice about refuse collection and compacting. It is the responsibility of the driver, who also acts as supervisor, to regular verify and ensure that the collectors obey the rules. The witness affirmed that the department enquiry on the accident was purely administrative and was not meant to determine who was really at fault. He stated that once the workers were directed not to walk on the waste, the danger associated with same was eliminated. There was accordingly no need to include same in the risk assessment.

8. In cross-examination, Mr. Torap stated that the Accused was unaware that refuse collectors had adopted a system of work of their own for some 12 years, contrary to what had been prescribed by the Accused's management.

9. I have duly considered the evidence on record and the submissions of Learned Counsel. The material facts of this case are not seriously in dispute. Mr. Rosanally, who was employed as refuse collector by the Accused, fell off a tipper lorry whilst he was performing his duty and was injured. At the material time, Mr. Rosanally was walking on the heap of waste in the lorry box so as to compact the garbage and complete his task earlier. The evidence also indicates that the refuse collectors were instructed not to walk on the waste in the lorry box because of the associated danger. They were meant to only collect garbage baskets and empty them in the lorry box. However, a different practice had developed over the years and the Accused claims that it was unaware of same.

10. According to section 5 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.*

(2) The employer shall, so far as is reasonably practicable, in particular—

(a) (i) provide and maintain a working environment;

(ii) provide and maintain any plant or system of work;

(iii) maintain any place of work under his control, including the means of access to, or egress from it,

that is safe and without risk to health;

(b) ensure that use, handling, storage or transport of articles or substances is safe and without risk to health;

(c) provide and maintain adequate facilities and arrangements for the welfare at work of his employees;

(d) provide information, instruction, training and supervision as is necessary to ensure the safety and health at work of his employees;

(e) ensure that any person not in his employment is not exposed to any risk to his safety or health.

…".

11. Pursuant to section 94(1)(i)(vi) of the OSHA, any contravention of the above constitutes an offence.

12. It follows from the terms of section 5 that an employer is required to *"ensure"* the safety, health and welfare of its employees at work. What that entails was addressed by the House of Lords in **R v. Chargot Ltd and others [2008] UKHL 73**. In that case, their Lordships were called upon to analyse the scope of provisions similar to our section 5 and had this to say:

> *"17. The first issue is to determine the scope of the duties imposed on the employer by sections 2(1) and 3(1). In both subsections the word "ensure" is used.* ***What is he to ensure? The answer is that he is to ensure the health and safety at work of all his employees, and that persons not in his employment are not exposed to risks to their health and safety. These duties are expressed in general terms, as the heading to this group of sections indicates.*** *They are designed to achieve the purposes* described *in section 1(1)(a) and (b). The description in section 2(2) of the matters to which the duty in section 2(1) extends does not detract from*

the generality of that duty. ***They describe a result which the employer must achieve or prevent. These duties are not, of course, absolute. They are qualified by the words "so far is reasonably practicable". If that result is not achieved the employer will be in breach of his statutory duty, unless he can show that it was not reasonably practicable for him to do more than was done to satisfy it."***

[Emphasis added].

13. Section 96(6) of the OSHA reads:

> *"**96. Special provisions as to evidence***
>
> *(6) In any proceedings for an offence under any provision of this Act consisting of a failure to comply with a duty or requirement to do something so far as is practicable or so far as is reasonably practicable, or to use practicable means or to take practicable steps to do something, it shall be for the accused to prove that it was not practicable or not reasonably practicable to do more than was in fact done to satisfy the duty or requirement, or that there was no better practicable means or step than was in fact used or taken to satisfy the duty or requirement, as the case may be."*

14. In the case of **Director of Public Prosecutions v. Mauritius Meat Authority (2024) SCJ 209**, the Supreme Court endorsed the observations made by the House of Lords in **Chargot *(supra)***:

> "*What the prosecution must prove is that the result that those provisions describe was not achieved or prevented.*
>
> *Once that is done a* prima facie *case of breach is established. The onus then passes to the defendant to make good the defence which section 40 provides on grounds of reasonable practicability …".*

15. In **Jeanneton v. Cie Sucrière de Bel Ombre (1993) SCJ 455**, the Supreme Court held:

> *"The test of what would be reasonably practicable was considered in Edwards v National Coal Board (1949) 1 K.B. 704, 712 where Asquith L.J. had this to say:*

"'Reasonably practicable' is a narrower term than 'physically possible' and seems to me to imply that a computation must be made by the owner, in which the quantum of risk is placed on one scale and the sacrifice involved in the measures necessary for averting the risk (whether in money, time or trouble) is placed in the other; and that if it be shown that there is a gross disproportion between them – the risk being insignificant in relation to the sacrifice – the defendants discharge the onus on them."

(see also Marshall v Gotham Co Ltd (1954) A.C. 360 and Jenkins v Allied Ironfounders Ltd (1970) 1 W L R 304)."

16. Furthermore, in **Talbot Fishing Co. Ltd. v Ministry of Labour & Industrial Relations (Occupational Safety and Health Inspectorate) (2006) SCJ 76**, the Supreme Court highlighted the following:

"It is relevant to point out that the onus of proving that it was not reasonably practicable to comply with the obligations laid under the Act, lied on the appellant company, although the burden could be discharged merely on a balance of probabilities – vide ***Halsbury's Laws of England, 4th Edition, Reissue Vol 20 (1) para 624****."*

17. In view of the foregoing, I consider that it does not suffice to instruct employees not to adopt a specific method of work. What the law requires from an employer is an efficient system of supervision and inspection to ensure that instructions are being properly followed. There was a real risk involved in the refuse collection process by tipper lorries and the evidence indicates that the Accused had identified same when, back in the year 2014, it instructed collectors not to sit or walk on heaps of refuse. But the central issue is whether that was enough for the Accused to discharge its statutory obligation.

18. In the present matter, I have no reason to doubt the version of witnesses Rosanally and Pultee who convincingly asserted that walking on the heap of waste was common and no one, including their direct supervisor, ever directed them to stop that practice. True it is that the workers' conduct, viewed in isolation, might be considered as imprudent or negligent. However, in **The Director of Public Prosecutions v. Flacq United Estates Ltd (2001) SCJ 301** the Supreme Court held that the issue in cases as the present one is not whether the injury to the employee has been caused by the employer's, or the employee's, negligence or imprudence but rather whether the employer was compliant with its statutory duty.

19. The Accused has pleaded unawareness of the dangerous practice developed by the refuse collectors. I consider that, even taken at its best, such defence cannot succeed. There is unrebutted evidence that the specific method of work has been adopted by the refuse collectors for years without any remonstrance. There is unchallenged evidence that on the day of Mr. Rosanally's accident, the supervisor, who was also the lorry driver, never actually left his seat to verify if the collectors were obeying instructions. At the end of the day, the perpetuation of the unsafe method of work which led to Mr. Rosanally's accident bears testimony to a lack of sufficient supervision on the part of the Accused. The blame for not detecting such irregular practice can only be placed at the Accused's door. The Accused has, thus, not convinced me that it had done all that was *"reasonably practicable"* to avert the risk in question.

20. For all the above reasons, I consider that the prosecution has proved its case beyond reasonable doubt. I find the Accused guilty as charged.

13 October 2025

M. ARMOOGUM

Magistrate