OSHI v Top Turf (Mauritius) Limited

2025 IND 53

Cause Number 142/22

In the Industrial Court of Mauritius
(Criminal side)

In the matter of:

OSHI

v.

Top Turf (Mauritius) Limited

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 seventh day of March 2020 to ensure so far as is reasonable practicable, the safety and health of its employees at work when one Taran Kumar Rughoonundun sustained fracture of his right tibia and fibula when the drawbar of a trailer which was being disengaged from a tractor fell on his right leg at his place of work situated at St Geran Hotel, La Pointe Belle Mare.

The Accused's representative, pleaded not guilty and was assisted by Counsel.

The case for the Prosecution unfolded as follows.

Ms. Rosunee gave evidence in Court in her capacity as Occupational Safety and Health Officer.

She stated that Mr. Taran Kumar Rughoonundun who was employed as gardener by Accused sustained a fracture of his right tibia and fibula, when the drawbar of the trailer of a tractor fell on to his right leg. He was conveyed to Flacq Hospital and obtained 3 months of medical leaves and additional ones (as per medical certificates (Docs. A, A1-A3) so that he resumed duty on 6.10.2020.

Her observations of the locus of the accident on 11.3.2020 and 26.5.2020 as per Docs. B & B1 and Docs C(C1-C7) are to the following effect –

1. The accident occurred in the premises of Le St Geran Hotel near the mess room of Top Turf (Mauritius) Limited.
2. Next to the mess room, there was a store made available for the storage of the tractor once disconnected from its trailer after use. The trailer was stored under a tree outside the mess room itself.
3. The site where the trailer was stored was uneven, rocky and sandy.
4. Pieces of wooden plank were being used for the wheels of the tractor to step on them.
5. Stones which were available in the surroundings were being used to chock the wheels of the trailer.
6. A trunk of a tree having a height of 37 cm and width 24 cm was used to rest the drawbar of the trailer once disconnected from the tractor.
7. There was another wooden plank having a length of 29 cm, width 9 cm and thickness 5 cm which was placed in between the draw bar and the trunk of the tree.
8. The box of the trailer was 3m27cm long, 1m70cm wide and as regards it drawbar it was 1m30cm long.

Her enquiry revealed –

(a) On the day of the accident, garbage collected on the premises of Le St Geran Hotel, was being disposed in a bin located near the mess room of Top Turf (Mauritius) Limited.

(b) After completion of work, the injured person was required to disconnect the trailer from its tractor which was to be parked in a store.

(c) The injured person placed two wooden planks onto which the rear wheels of the tractor had to step on in order to cause the drawbar to be in an elevated position. Then, the driver reversed the tractor so that the rear wheels of the tractor climbed on the wooden planks.

(d) The driver switched off his tractor and helped the injured person to chock the wheels of the trailer by means of stones and also placed a wooden trunk together with a wooden plank on the top just underneath the drawbar of the trailer.

(e) Then, the driver switched on the tractor and the injured person removed the pin which connected the tractor to its trailer.

(f) Once the pin was removed, the driver moved the tractor forward so that the drawbar of the trailer rested on the wooden trunk and plank.

(g) The injured person stated that nobody informed him that the way he was doing the work was inappropriate.

(h) He also confirmed that the stones used to chock the wheels of the trailer were picked from the premises of the mess room and as regards the wooden trunk and plank same were brought by the employees and management had not made any provision to facilitate the task of the employees in disconnecting the trailer from its tractor.

(i) He confirmed that on the day of the accident he was wearing his safety shoes.

(j) He and the driver confirmed that the drawbar of the trailer could not be disconnected and placed on the ground, as it would get sunk into the sand. The drawbar which formed part of the structure of the trailer could weigh approximately 1 ton. Hence, it would be difficult to lift the trailer out of the sand.

(k) The wooden trunk and plank placed on top were both not fixed by any means but were loosely placed on the sandy surface.

(l) The surface onto which the trunk was placed was soft, sandy and not levelled.

(m) He and the driver confirmed that there was a possibility that the drawbar of the trailer did not rest on the wooden trunk as it was heavy, hence causing the trunk to sink into the sand and the trailer to fall on the ground.

Her Findings –

After completion of work, the injured person was required to disconnect the trailer from its tractor so that the tractor was to be kept in the store. A wooden trunk placed

on a sandy surface was being used to support the drawbar of the trailer. A safe system of work was not established as regards the work which was being carried out at the time of accident.

Thus, she concluded that the accused employer has failed to ensure the safety and health of Mr. Taran Kumar Rughoonundun who sustained a fracture of his right tibia and fibula by failing to establish a safe system of work when disconnecting the trailer from its tractor as per her report (Doc. H).

Under cross examination, she stated that she recommended an extended base namely a metal stand well anchored on a foot hold being the base to sustain that weight(tons) of the trailer in an extended store during the disconnecting process so that the employees did not have to get involved just like before removing the pin. In the present case, there was a wooden structure on a sandy surface, there was a high possibility that it sank in the sand and that was what happened. After the accident measures were taken that the injured person like other employees needed to keep a safe distance from the disconnecting and connecting point but at the time of accident, such measures were not taken.

Mr. Taran Kumar Rughoonundun (the injured person) gave evidence in Court.

On 7.3.2020, he was working for the Accused and he had been doing so for about seven years. His job was to remove the algae from the beach. On 7.3.2020 he was instructed by his Superior to remove algae from the beach and he almost finished at about 11.30 hours when he went to disconnect the trailer from its tractor in order for the latter to be put in a store. When he disconnected the trailer, there was a wooden trunk which was being used in that exercise but which was wet as it rained during the night. Both the trailer and wooden trunk fell on to his foot. He was injured at his right foot by the trailer as his foot went below it with the weight. Had the ground been made of cement, his foot would have been cut, but given that the ground was made of sand, his foot got a bit inside the sand and was only fractured. He did that job frequently and there were no shortcomings at the level of the Accused.

Mr. Bijay Futtingah, Supervisor, gave evidence in Court.

He was working for the Accused on 7.3.2020 and was supervising the gardeners. He had been working for the Accused for twenty-eight years and was still working there. He gave Mr. T. K. Rughoonundun instructions to work on that day meaning to go in the tractor driven by Mr. Assen Rujubally. While the trailer was being disconnected from the tractor, the trailer fell on to his foot and he was injured there. He was used to do that job and there were no shortcomings at the level of the Accused on that day.

Mr. Assen Rujubally, driver of the tractor, gave evidence in Court.

He was working for the Accused on 7.3.2020 and had been doing so for about five years. On that day, their manager gave Mr. T. K. Rughoonundun instructions to work. After he finished his work as driver, he stopped the tractor. The latter had to be disconnected from its trailer in order for him to keep it. The trailer while Mr. Rughoonundun was disconnecting it, put a wooden trunk below it so that he could pull the tractor for the disconnection, when the wooden trunk skidded and fell on his foot. He was injured at its place of work at his foot as the trailer fell on to his foot. It was not a routine job for the injured person as they got several persons. There should have been a stand to put down for disconnecting the trailer and not a wooden trunk. At times they got stones and at times a wooden trunk to put the trailer there so that he could pull the tractor in front. At times they used to do that work with the wooden trunk and stones and the injured person as well knew how to do that sort of work. He did the work on the material day the way they used to and they never had any problem in the past and it was all the time like that. It was for the first time that they had problems.

No evidence was adduced on behalf of the Defence. But the Accused's representative has denied the charge in his unsworn statement given to the enquiring officer as per Doc. G.

I have given due consideration to all the evidence put forward before me and the submissions of learned Counsel for the Defence. The evidence led by the Prosecution witnesses apart from the enquiring officer is to the effect that there are no shortcomings at the level of the accused party as regards the safety and health of the workers doing the disconnection of the trailer from the tractor, as it was always done like that and that there were no problems in the past. However, the driver of the tractor as well as the enquiring officer were of the view that the wooden trunk

ought not to have been used but a stand instead (like, for example, a metal stand which the enquiring officer requested to be with an extended surface to secure a foothold so that the trailer could be anchored on the stand where there is a foothold for the disconnection process rather than removing the pin and on a concrete ground meaning of an extended store).

However, the injured person contended that had there been a concrete ground instead of the sand, his foot would have been cut had the trailer fallen on him, as his foot got sank a little in the sand protecting him from more serious injury.

Nevertheless, the system of work put into place by the Accused for the specific work of disconnecting the trailer from the tractor, did not protect the workers from the unstable wooden trunk with the unstable plank on top, from sinking and skidding on an unstable surface meaning the sinking sand caused by the weight of the trailer when disconnected let alone that only protective shoes were provided. In fact, it remained unrebutted that the workers devised their own method for such a work for which no facilities nor tools were provided by the Accused so that they did so by picking up stones, a wooden trunk and wooden planks from their surrounding for which there were no risks assessment done nor training given as to the safety measures to be taken. The risk assessment done on 25.1.2019 was not a suitable and sufficient one as per Doc. D as it did not cater for that specific work let alone that it remained unrebutted that there was strict adherence to the procedure in place.

Therefore, such a system of work existing at the time of the accident cannot be construed as a safe one, as the risks of injury were highly foreseeable. The contention of the injured person that he could have sustained more serious injuries had the ground not been sand, in no way detracts from the material fact that the system of work of Accused was still unsafe and was the cause of the accident on the material day leading to injuries being caused to the worker.

Now, the fact that no accidents occurred in the past does not render the system of work of Accused automatically safe. Indeed, it is well settled as per the oft-quoted case of **The DPP v Flacq United Estates Ltd** [2001 SCJ 301] where the Supreme Court highlighted that the primary issue for the Court to decide is whether the system of work adopted by the Accused was a safe one compliant with the requirements of the Act and which cannot be equated with absence of serious accidents having

occurred in the past nor the negligence of the employee, for example, the skidding of the wet wooden trunk in the disconnection exercise.

The relevant extract given in relation to a breach of section 5(1) of the Occupational Safety, Health & Welfare Act 1998 applies to section 5(1) of the Occupational Safety and Health Act 2005 (being a consolidating Act) and which reads as follows:

"(…) Section 5 of the Act indeed provides for the duties and responsibilities of an employer towards his employees. One of the primordial duties expressly set down in the law is that of ensuring the safety, health and welfare at work of the employees.

The primordial issue which the learned Magistrate had to decide was whether the particular system of work adopted by the respondent (…) was safe. The issue was not whether the death of Labiche had been caused by the respondent's negligence or imprudence or whether Labiche had himself been imprudent when he entered the ashtray through the small door. Also, it is not because no serious accident had occurred in the past that a system of work is necessarily compliant with the requirements of the Act." (**emphasis added**)

Indeed, in **Babooram J. v Ministry of Labour** [2013 SCJ 6] at page 2, the Supreme Court has emphasised on the following:

"

[8] *In law, the liability of an employer to his employee is not demarcated physically by the area of the ground, floor or surface area where the employee is made to work but by the concept of "at work". The duty is not related to the work-place as such but to the work.*

[9] *Section 5(1) of the Occupational Safety, Health and Welfare Act (Act No. 34 of 1988) reads as follows:*

> *"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." (underlining ours)*

[10] *The meaning of "at work" is larger than on site. It includes the provision of a working environment that is safe and without risks to health. (…) In this sense, "at work" is a concept not a physical location. (…).*

[13] *(…) An employer's duties under the Act should be noted:*

"(2) Without prejudice to the generality of an employer's duty under subsection (1), the matters to which that duty extends shall include in particular-

*(a) the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work;"" (**emphasis added**)*

Therefore, I find that the Prosecution has established its case beyond reasonable doubt that the particular system of work adopted by the Accused on the material day was unsafe and was the cause of the accident which led to the unfortunate injuries sustained by Mr. Rughoonundun.

At this particular juncture, I find it apt to reproduce section 5(1) of the Occupational Safety and Health Act 2005 below:

*"**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.

It is worthy of note that as per the information, the words *"so far as is reasonably practicable,"* are not used but *"so far as is reasonable practicable,"*. Given that there is no comma between the words "reasonable" and "practicable", there is nothing to impute that those words have to be construed separately. Thus, the word *"reasonable"* necessarily qualifies the word *"practicable"*. Given that there is no evidence of prejudice suffered by the Accused borne by the evidence on record (in the sense that it has been misled in the preparation of its case), 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 (*vide* – **Venkiah v R** [1984 MR 62]).

For all the reasons given above, I find that the Accused has lamentably failed to discharge the burden placed upon it namely that it was not *reasonably practicable* for it to render the system of work safer, as the sacrifice involved in taking the necessary measures(whether in money, time or trouble) for averting the quantum of risk of injuries, can hardly be construed as being grossly disproportionate (*vide* - **Jeanneton v Cie Sucrière de Bel Ombre** [1993 SCJ 455]). Therefore, I find the Accused guilty as charged.

S.D. Bonomally (Mrs.) *(Vice President)*
29.7.2025