

OSHI v Aluminium Glass Industries (Mauritius) Ltd

2022 IND 59

Cause Number 34/17

**In the Industrial Court of Mauritius
(Criminal side)**

In the matter of:

OSHI

v.

Aluminium Glass Industries (Mauritius) Ltd

Judgment

Accused being an employer is charged under Section 5(1) and Section 94(1) (i) (vi) of the Occupational Safety and Health Act 2005 – Act No.28 of 2005 coupled with Section 44(2) of the Interpretation and General Clauses Act with unlawfully failing on or about 23 February 2015 to ensure so far as is reasonably practicable, the safety, health and welfare at work of its employees where two of them namely one Leckraj Kumar Mangar and one Douglas Paul Michael sustained injuries while they were involved in handling glass panels at their place of work at Montebello, Pailles.

The particulars of the charge are as follows:

“The A-frame metal rack consisted of longitudinal legs on both sides of the said frame. The length of the legs of the A-frame on one side was 1 metre each and

on the other side the legs were of 25 cm each. Laminated glass panels should have been stacked only on the side of frame with legs of 1 metre. However, the shorter legs of 25 cm were also accessible and were used to stack laminated glass panels.

No notice was affixed on the A-frame metal rack for prohibition of stacking of glass panels on the legs of 25 cm each.

Also, the frame was not placed in such position that would cause the shorter legs of 25 cm to be isolated so as to deny access to that part.”

The Accused represented by Mr. Pritiveeraj Chadee in his capacity as Director pleaded not guilty to the charge and was assisted by Counsel.

The case for the Prosecution is to the following effect.

Mr. Vikram Somajee in his capacity as Principal Occupational Health and Safety Officer gave evidence in Court. He enquired into an accident at work which occurred on 23.2.2015 at the premises of Accused, that is, factory of Accused at Montebello, Pailles where several employees sustained injuries.

In the course of his enquiry, he took 6 photographs on 11.3.2015 when he attended to the locus of the accident as per Docs. B(B1-B6). He recorded a statement from the Accused's representative under warning on 4.8.2015.

He observed that there were A frame racks made of metal tube that were used to stack glass panels for storage at the factory of Accused. The A frame racks were described as per the photographs taken. Where the A frame racks contained legs of equal lengths on both sides namely of 1 metre, they could stack glass panels longitudinally on both sides. But where the A frame racks contained shorter legs on one side viz. 25 cm long instead of 1 metre, then glass panels were stacked on the legs of one metre long only on the other side.

However, as per his enquiry, it was a common practice at the factory since its operation for about 3 years to have the legs of the A frame racks extended by wooden blocks for more storage of glass panels. There were several such A frame racks extended in that manner at the factory.

As regards the A frame rack involved in the present accident as per Doc. B1, it did not contain legs of equal lengths on both sides meaning of 1 metre long. On one

side, it contained legs of 1 metre long and on the other, it contained shorter legs of 25 cm long. On its side containing the shorter legs of 25 cm long, they were extended by wooden blocks of about 140 cm for the storage of about 21 laminated glass panels of dimension 2134 mm by 3300 mm by 16 mm while on the other side there were about 4 plain glass panels of 6 mm thick. On the side where the legs were 1 metre long was where the glass panels were supposed to be stacked. The length of the rack was 3.65 metres and its height was of 2.60 metres. Doc. D1 showed that there were 21 laminated broken glass panels of dimension 2134 mm by 3300 mm by 16 mm lying on the floor. Doc. B2 showed where the injured person namely Mr. Douglas Paul Michael was showing the A frame metal rack involved in the accident and the said 21 laminated broken glass panels lying on the floor and which were placed on the shorter legs of the rack that had fallen at the time of the accident. Doc. B3 showed a closer view of the A frame metal rack involved in the accident to show the side having shorter tubular metals legs of 25 cm long. Doc. B4 showed the wooden blocks which were used to extend the lengths of the shorter legs of the A frame rack under the fallen 21 laminated broken glass panels lying on the floor and which were stacked on the extended shorter legs. Now, Doc. B5 showed a similar A frame metal rack having legs of the same lengths of 1 metre on both sides which were extended by wooden blocks on one side to stack more glass panels. Doc. B6 showed a similar A frame metal rack but having legs of the same lengths on both sides and which were not extended by wooden blocks.

There were no labellings on the particular type of A frame racks like the one involved in the accident where they contained shorter legs of 25 cm long on one side and on the other side, they contained legs of 1 metre long.

During his enquiry, when he called at the factory, he observed that there were about 21 laminated glass panels which had fallen and had been broken. His enquiry revealed that the A frame rack having shorter legs on one side was being used to stack glass panels on both sides by extending the shorter legs with wooden blocks of about 140 cm and on those shorter legs of the rack, there were about 21 laminated glass panels and on the other longer side, there were 4 plain glass panels of 6 mm thick. In fact, the employees were involved to remove a plain glass panel of 6 mm thick from the longer side, from the longer legs of 1 metre long of the rack for cutting purposes. While they were removing the 6mm glass panel, suddenly the glass panels on the side of the extended shorter legs by wooden blocks glided and slid at the back causing the 21 laminated glass panels to fall and all the remaining weight

pushed the A frame rack forward hitting the employees who sustained injury. The 21 laminated glass panels were broken. According to his enquiry, the A frame rack was displaced by about 2.17 metres. The glass panels were stacked in that manner for about 2 weeks before the accident. It was a practice at the factory that the A frame rack legs were being extended by using wooden blocks to increase storage on the racks and it was about 3 years since that factory was in operation. According to his enquiry, the weight of 21 laminated glass panels was about 6000 kg.

As per the conclusion of his enquiry as per Doc. E, this type of accident could be prevented. First of all, it was observed at the factory that all the A frame racks were yellow in colour and that in fact there was a practice of extending the legs by using wooden blocks. Therefore, that practice of extending the legs by using wooden blocks should have been prohibited because given that the glass panels were stacked on the A frame which were placed on wooden blocks would mean that it would be unstable, because whenever there was a difference in the weight it would be unstable as whenever there was a difference in the weight on the other side, the wooden blocks would certainly move away and cause the glass panels to fall down causing a frame to be unstable and to be displaced and that was a hazard that the glass panels would fall down and there was a risk that the employees would sustain injury, that is, they might sustain laceration injury, crush injury or even being hit by a frame.

Therefore, that A frame should have been isolated so as to refrain employees from extending the legs and from placing glass panels onto the shorter legs and also there should have been a notice posted on the A frame rack so as to restrict employees in the stacking of glass panels on that rack.

During the course of his enquiry, he received a risk assessment form from the Accused as per Doc. D. The risk assessment was normally a combination of the severity of the hazard and the risk that the employees would sustain injury. According to the risk assessment as per Doc. D in relation to the stacking and storing of glass panels, the hazard was falling glass panels and who were those who might sustain injuries. All the workers were exposed and the control in place was that racks were designed to take up appropriate loading. But monitoring ought to have been done and a further action was to secure the storage rack, not to overload racking, to protect racking from damage and to inspect regularly, not to use damaged pallets or stacking glass panels at the correct angle in that risk assessment. There was no

mention of A frame rack having shorter legs that the control measures should have been to isolate or to cause a notice to be posted onto it so as to refrain employees from stacking glass panels and also there had been no mention about the risk associated when extending the legs with wooden blocks in the risk assessment. Upon completion of his enquiry, he put up a report as per Doc. E.

In cross-examination, he stated that he was an experienced officer of 10 years and that the width of the metal tube of the A frame rack that was on the floor was about 2 inches and the weight of the rack was at least 6 tons. He further stated that the A frame racks should have been bolted to the wall on their sides having shorter legs where they could not stack glass panels and thus, would have been isolated so that there would have been no access to them for stacking purposes including the use of wooden blocks for an increased stacking.

He could not say whether the employees knew that they should not put glass panels on the shorter part meaning on the shorter legs of the A frame racks. But the employer should have put a notice informing the employees that they were prohibited from stacking glass panels there. He did not consider the possibility of the accident happening as a result of the negligence of the employees or by the fact that they did not follow the procedures in place because as per his enquiry and according to his report, the employer should have taken all the reasonable precautionary measures to prevent that accident.

Mr. Mangar Leckraj Kumar in his capacity as refuse collector gave evidence in Court. On 23.2.2015 he was working for the Accused as helper and had been doing same for 2 years. On that day, he was lifting a glass panel to be cut upon instructions given to him by his Manager one Kavish. There were 4 persons involved including him and Douglas to lift the glass panel to be placed on a table where it would be cut. They were lifting the glass panel of 6 mm thick among 7 glass panels on that side of the rack and there were 20 glass panels stacked on the shorter legs of the rack which were extended by wooden blocks. There was no notice to say that the rack had to be immobile. They held the glass panel with their hands and they were given gloves for that purpose and they had access to the table on both sides when the part of the rack containing long legs skidded and moved towards them near the table. There were no measures in place to prevent the workers from stacking glass panels on the shorter legs and there was no notice to that effect and the glass panels were stacked in that manner all the time. No one told him that he could not

stack glass panels on the shorter legs of the A frame racks. He confirmed that the A frame rack as per Doc. B1 was the one involved in the accident.

In cross-examination, he stated that he worked for 2 years as helper for the Accused and then stopped. He was working with another worker on the table namely Mr. Pravin Kissoon who taught him the work. He also worked with several workers and he learnt the work through them by only helping them. They taught him in the same way they did their job which was well done. He had a good training at work and knew how to do his job and how to hold glass panes. Although he did not cut them, he knew where to place them and the way to do so on the rack. Mr. Ramcharan was supervising namely looking at their work meaning that of the other employees as well although they were good at their job. Mr. Ramcharan was also doing a good job and if something was wrong he would tell them as supervisor but he did not teach them how to do their work. He was satisfied with the training he got from the other workers and he had nothing to complain about the Accused as regards the training given to him by the workers and about safety measures.

Mr. Douglas Paul Michael gave evidence in Court in his capacity as glass cutter. On 23.2.2015 he was working for the Accused and had been working as general worker for about 4 years. Mr. Ramchurn gave him instructions to do his job. On that day, he was instructed to place a big clear glass panel which was 6 mm thick on a table to be cut and there were 4 persons who held that glass panel including him and Mr. Mangar. When they lifted the said glass panel with their hands from an A frame rack which toppled and thus causing the accident to take place. He was injured at his hand and leg while he was working as helper as he was giving a helping hand everywhere. He identified Doc. B1 as being the A frame rack that was concerned with the accident. He had been working under many workers and he learnt the work correctly from them and they also did their work correctly. He had no complaint to make against the Accused that he was not given training as to how to do that job. It was possible that the accident happened because one of them committed a mistake when raising the glass panel.

The representative of the Accused did not adduce any evidence in Court and admitted that the workers should not have stacked glass panels on the shorter legs of the A frame racks and should not have extended their lengths with wooden blocks

and that the supervisors were not made aware of that fact by them as was the case for the A frame rack concerned in the present accident where glass panels were stacked in that manner 2 weeks prior to the accident as per his unsworn version viz. Doc. C. He further admitted that the two workers namely Mr. Douglas Paul Michael and Mr. Mangar Leckraj Kumar were injured as a result of the accident in his out of Court statement namely Doc. C as per the medical certificates produced in Court namely Docs. A & A1 and that there were 2 more workers who were injured.

I have given due consideration to all the evidence put forward before me including the documentary evidence and the submissions of learned Counsel for the Accused.

It has not been contested that the two employees namely Mr. Mangar and Mr. Douglas were injured at their place of work as a result of the accident as per the medical certificates produced namely Docs. A & A1. Both victims struck me as being persons with a very poor level of literacy which explain some inconsistencies and contradictions in their testimonies which I consider to be minor and not to affect the root of the case for the Prosecution.

The material fact remained that it is common ground in view of the unsworn version of Accused as per Doc. C that the accident was culminated by the fact that the A frame rack involved in the accident as per Doc. B1 was one having shorter legs on one side where they should not be used for stacking glass panels and that the said legs being shorter of lengths of 25 cm instead of 1 metre were further extended by wooden blocks and about 21 laminated glass panels of 16mm thick were stacked there for about 2 weeks prior to the accident without same having been reported to the workers' supervisors when gauged with the fact that there were less than 10 glass panels of 6mm thick on the longer side of the rack wherein one of them was being removed.

Indeed, although Mr. Douglas and Mr. Mangar had no complaints about any inadequate training or supervision or lack of safety measures as regards their place of work and the work they were trained and assigned for, Mr. Mangar candidly admitted that glass panels were always stacked on the shorter legs of the A frame racks and those shorter legs were further extended by wooden blocks for an increased storage and that was the way he was taught by other workers to do the work and more importantly no one told him that he could not do so in that way. This

state of affairs is in line with the testimony of the enquiring officer that it was a common practice for about 3 years since the operation of the factory of Accused to have the shorter legs of A frame racks extended by wooden blocks for an increased storage of glass panels and which should not have been the case as storage of glass panels should have been done on the side of the rack containing legs of 1 metre long only. Furthermore, the representative of the Accused in his unsworn version as per Doc. C admitted that glass panels should not be stacked on the short legs of the A frame racks and that after the accident, all concerned employees were informed and instructed not to stack glass panels on the shorter legs of the A frame racks and that those shorter legs were not to be extended by wooden blocks for glass panels to be placed.

Thus, it is abundantly clear that where the length of the legs of the A-frame rack on one side was 1 metre each and on the other side the legs were of 25 cm each, laminated glass panels should have been stacked only on the side of frame with legs of 1 metre. However, the shorter legs of 25 cm were also accessible at the material time and were used to stack laminated glass panels as no notice was affixed on the A-frame metal rack for prohibition of stacking of glass panels on the legs of 25 cm each and the rack was not placed in such position that would cause the shorter legs of 25 cm to be isolated so as to deny access to that part. Indeed, the Accused did not depose under oath to explain that such failure on its part was because it was not reasonably practicable for it to do otherwise, but on the contrary it has complied with safety measures after the accident in preventing the stacking of glass panels on the shorter legs of 25 cm long found on one side of A frame racks as per its unsworn version viz. Doc. C.

True it is that the accident could have happened by the mistake or negligence of one of the workers but there is no evidence to suggest that the negligence was to such an extent so as to negate the failure on the part of the employer namely the Accused to have provided a safe system of work for its employees which was reasonably practicable for the Accused to do in line with the measures taken after the accident including the denial of access to the shorter legs of the A frame racks as per its unsworn version namely Doc. C.

Indeed, in the Supreme Court case of **The D.P.P. v Flacq United Estates Ltd [2001 SCJ 301]**, it was stressed that the primordial issue that the Court has to decide

is whether the particular system of work adopted by the Accused meaning the employer was found to be safe and not the negligence of the worker.

For all the reasons given above, I find that the case for the Prosecution has been proved beyond reasonable doubt. I, accordingly, find the Accused guilty as charged.

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

22.12.22