

OSHI v Goldox Construction Ltd

2024 IND 62

THE INDUSTRIAL COURT OF MAURITIUS
(Criminal Side)

In the matter of:-

CN 94/2024

OSHI

v.

Goldox Construction Ltd

SENTENCE

1. The Accused company has pleaded guilty to an information charging it with:
 - (i) failing to ensure that work platforms are provided at any place of work which afford a proper and secure foothold – breach of Regulation 19(1)(a) and Regulation 60 of the Occupational Safety and Health (Safety of Scaffolds) Regulations 2013 (GN 16 of 2014) coupled with section 44(2) of the Interpretation and General Clauses Act;
 - (ii) failing to ensure that scaffold is effectively braced by means of longitudinal and transverse bracing systems which extend from the base to the top of the scaffold – breach of Regulation 17(1)(a) and Regulation 60 of the Occupational Safety and Health (Safety of Scaffolds) Regulations 2013 (GN 16 of 2014) coupled with section 44(2) of the Interpretation and General Clauses Act;
 - (iii) failing to ensure that every side of a work platform, from which a person is liable to fall more than 2 metres is provided with toe-boards and 2 or more guardrails – breach of Regulation 23(a) and Regulation 60 of the Occupational

Safety and Health (Safety of Scaffolds) Regulations 2013 (GN 16 of 2014)
coupled with section 44(2) of the Interpretation and General Clauses Act

The Accused stands convicted as charged.

2. A hearing was held into the circumstances of the offences and revealed that an inspection was carried out at the Accused's construction site in Trianon on 13 April 2023 by the Occupational Safety and Health Inspectorate of the Ministry of Labour, Human Resource Development and Training whereby the above contraventions of the law were observed. Photos of the state of the scaffoldings were produced to illustrate the offending state of affairs at the Accused's construction site (**Documents A to A3**).

3. In Court, the Accused's representative stated from the dock that personnel have now been recruited by the company to ensure compliance with the law.

4. The certificate of Accused's previous convictions shows that the company has been convicted for similar offences in the past.

5. 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.*"

6. Pursuant to section 94(3)(b) of the Occupational Safety and Health Act 2005 (OSHA), the Accused is liable "*to a fine not exceeding 75,000 rupees and to imprisonment for a term not exceeding one year*" under each count of the information.

7. 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.**

8. I have considered the facts and circumstances of this case as borne out in evidence, and summarised above. I take note of the Accused timely guilty plea, which is a strong mitigating factor. I, however, observe that the Accused has been convicted and fined for similar offences in the past. I note that the Accused's representative asserted that remedial measures have been taken to ensure compliance with the applicable regulations.

9. For all the foregoing reasons, I sentence the Accused to pay a fine of Rs 3,000. under each count of the information. The Accused is also ordered to pay Rs 200. as costs.

28 October 2024

M. ARMOOGUM

Magistrate