

OSHI v The District Council of Grand Port

2025 IND 17

THE INDUSTRIAL COURT OF MAURITIUS

(Criminal Side)

In the matter of:-

CN 210/2021

OSHI

v.

The District Council of Grand Port

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 forthwith notify the Director, Occupational Safety and Health of an accident arising out of or in connection with 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 of an accident arising out of or in connection with work 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 offences. It came out in evidence that on 30 November 2017 one Somanah Buddaru, who was employed by the Accused as handy worker, sustained burn injuries in the course of his work. At the material time, he was in the lift bucket of a street lighting lorry in order to change a defective bulb of a street light when the said bucket touched a high tension

uninsulated overhead power line. Mr. Buddaru suffered second degree burns over his chest and abdomen. He was admitted to hospital for treatment for some three weeks. Enquiry revealed that the high tension line ought to have been disconnected before work is carried out at a distance of less than 3 metres, and this was not done. Moreover, the work accident was not reported by the employer, nor was a report sent to the Ministry within seven days as required by law.

3. The Accused's representative has denied the charges in its out-of-court statement. No evidence was adduced on behalf of the Accused in Court.

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 *“either injury (including burns) requiring immediate medical treatment, or loss of consciousness, resulting in either case from an electric shock from any electrical circuit or equipment, whether or not due to direct contact”* is on the *“list of injuries requiring immediate notification.”* By virtue of section 94(1)(i)(vi) of the OSHA, any person who contravenes a provision of the Act shall commit an offence. As employer, the Accused has rendered itself 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, the Accused has endangered the life of one of its employees. Furthermore, the Accused has failed to report the matter to the Ministry as required by law. This is very serious. On the other hand, the Accused has a clean record and has entered an early guilty plea; these are strong mitigating factors.

10. In view of all the foregoing circumstances, I sentence the Accused to pay a fine of Rs 10,000. under Count I, Rs 2,000. under Count II and Rs 2,000. under Count III of the information. The Accused shall also pay Rs 200. as costs.

25 March 2025

M. ARMOOGUM

Magistrate