

OSHI v Denim de l'Ile Limited

2024 IND 61

THE INDUSTRIAL COURT OF MAURITIUS

(Criminal Side)

In the matter of:-

CN 65/2023

OSHI

v.

Denim de l'Ile Limited

SENTENCE

1. Further to its guilty plea, the Accused company has been convicted for having failed to ensure, so far as is reasonably practicable, the safety, health and welfare at work of one of its employees, in breach of section 5(1), coupled with section 94(1)(i)(vi), of the Occupational Safety and Health Act 2005 (OSHA).

2. It came out in evidence in the course of the hearing that on 28 May 2021, an accident at work occurred in the yard of the Accused's factory situate at Rivière du Rempart whereby one Marie Ange Naboth, who was employed as machinist, sustained degloving injury to her right ankle and foot, and fracture at her right lateral malleolus bone. The enquiry led by the Occupational Safety and Health Division of the Ministry of Labour, Human Resource Development and Training showed that the employee was struck by a forklift. The evidence indicates that remedial measures have been taken at the level of the company since that accident. The risk assessment was reviewed and safety procedures implemented to ensure no recurrence.

3. The Accused's representative, Mr. Gurriah, solemnly affirmed in Court that the victim had been duly compensated by the company's insurance. She still works for the company. Mr. Gurriah tendered apologies on behalf of the Accused.

4. Learned Counsel appearing for the Accused highlighted the mitigating factors in this case and invited the Court to impose a minimal fine.

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. 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.

...".

7. 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"*, 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."* Moreover, 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 all the facts and circumstances of this case as borne out on record. I find that this accident at work could have been avoided had proper safety

measures been in place at the Accused's factory yard. There is unchallenged evidence, however, that the needful has now been done and that no similar incident has since occurred. I note that the Accused in borne on record for cognate offences, one of which dating back to the year 2011, and which I shall disregard. I also consider the timely guilty plea offered in this case to be a significant mitigating factor.

10. Bearing in mind all the above considerations, I sentence the Accused to pay a fine of Rs 6,000. The Accused shall also pay Rs 200. as costs.

28 October 2024

M. ARMOOGUM

Magistrate