**OSHI VS RELAXON BEDDING LTD**

**2024 IND 41**

**MINISTRY OF LABOUR, INDUSTRIAL RELATIONS, EMPLOYMENT AND TRAINING (OSHI) VS RELAXON BEDDING LTD**

Cause Number: 120/2022

**THE INDUSTRIAL COURT OF MAURITIUS**

**(Criminal Division)**

In the matter of:-

**MINISTRY OF LABOUR, INDUSTRIAL RELATIONS, EMPLOYMENT AND TRAINING (OSHI)**

**VS**

**RELAXON BEDDING LTD**

**JUDGMENT**

*Introduction*

This is a case where the Accused stands charged under 2 Counts in an Information, as follows:

(i) Under Count I with the offence of failing to ensure the safety and health at work of its employees in breach of section 5(1) and sections 94(1)(i)(vi) and 94(3)(b) of the Occupational Safety and Health Act – Act No. 28 of 2005 coupled with section 44(2) of the Interpretation and General Clauses Act;

(ii) Under Count II, with the offence of failing to notify an accident to the Director, Occupational Safety and Health by the quickest practicable means in breach of section 85(1)(a) and sections 94(1)(i)(vi) and 94(3)(b) of the Occupational Safety and Health Act – Act No. 28 of 2005 coupled with section 44(2) of the Interpretation and General Clauses Act.

The Accused, as duly represented, pleaded not guilty to Count 1 of the Information, pleaded guilty to Count II of the Information and was assisted by Counsel.

*The facts*

On the 16th June 2020, an accident occurred at the place of work in the factory of Accused company situated at Valentina Phoenix, where Mr Rijvi Shah Riar, an employee of

the Accused company, sustained fracture of his right olecranon when his right hand was caught in between two rollers of a roll pack machine whilst he was checking the sensor of the said machine. Mrs Ramkurrun, a Principal Occupational Safety and Health Officer, enquired into the case. She took 3 photographs which were duly bound in a booklet and produced in Court.

Mrs Ramkurrun testified that she called on the locus of the accident on the 16th June 2020. She recalled her observations in Court to the effect that the machine involved in the accident was a roll pack machine with no make or serial number, and having as functions the sealing of plastics and crushing and rolling of mattresses. The machine also consisted of 2 rollers in the rolling and pressing part with a sensor found at the top of the 2 rollers. There was a fencing around the rollers. According to Mrs Ramkurrun, the roll pack machine did not have an interlocking device and no suitable and sufficient assessment of risks was undertaken by the employer. She averred that if there was an interlocking device, the machine would not have switched on again.

The version of the Accused is contained in a statement given by the representative of the Accused to Mrs Ramkurrun on the 11th December 2020. The Accused explained that the roll pack machine had already an inbuilt safety feature placed at the time of manufacturing and the machine represents no risk during normal operation hours. He provided the necessary training to the employee. The Accused agreed that he did not notify the Ministry forthwith of the accident.

*Observations*

I have assessed the evidence on record. The Information has levelled 2 offences against the Accused company as a body corporate with reference to section 44(2) of the Interpretation and General Clauses Act. I deem it fit to refer to the case of **TOORBUTH Z v THE STATE & ANOR (2012) SCJ 417** as follows:

> *"Pursuant to section 44 (1) (b) of the Act it is the established principle that where the prosecution brings a charge against a corporate body as opposed to a person who was concerned in its management or who purported to act in that capacity, it has to prefer the charge against that corporate entity itself, as represented by its representative. On the other hand, if the prosecution elects not to prosecute the corporate body but an individual who, at the time the offence was committed, was concerned in the management of the corporate body or who was purporting to act as one concerned in its management, then the charge must contain the*

*appropriate averment to make it disclose an offence within the purview of section 44 (1) (b) of the Act -vide **J.J. Desvaux de Marigny v The State (1999) SCJ 414**".*

The same principle has been applied in the cases of **JHUNGEE A. K. v THE STATE (2019) SCJ 40** and **JHUMMUN S V THE STATE OF MAURITIUS [2016 SCJ 296].**

In the present case, the Accused is charged under 2 Counts of the Information and at the outset, I shall deal with the version of the Accused given to the Occupational Safety and Health Officer. There is no doubt that the Accused made a clean breast with regards to Count II of the Information. With regards to Count I of the Information, he stated that he agreed with the charge under section 5(1) of the Occupational Safety and Health Act but explained that the machine was bought from the manufacturer as it is, with all safety measures and directives complied with. He further averred that the sensor was designed and placed at the centre of the roller so that the employee had the burden to remove a heavy metal guard from its safe position, extend his arm and body to overreach the sensor.

I find that the Accused did not confess to the charge of failing to ensure the safety and health at work of its employees when he gave a version exonerating the Accused company from blame through the acts and doings of the injured employee. It is to be remembered that:

*"words uttered by an accused party are not to be relied upon as admissions of guilt if they are of an equivocal nature and cannot lead to an irresistible inference of guilt."* **(RE: MIRONE I VS THE STATE (1997) SCJ 409).**

I am therefore of the view that I cannot attach weight to the statement of the Accused as being a confession to the commission of Count I of the Information. **(RE: LUCHMUN Y VS THE STATE (2019) SCJ 242).** I am comforted in my reasoning as the Accused unequivocally pleaded not guilty to Count I of the Information. **(RE: ISIDOR VS R (1982) MR 262).**

COUNT I

Under Count I of the Information, the Accused stands charged for an offence of having failed to ensure the safety and health at work of its employees for having failed to take appropriate measures to prevent injury to Mr Riar who sustained a fracture of his right olecranon when his right hand was caught in between two rollers of a roll pack machine whilst he was checking the sensor of the said machine. This happened at the place of work. Section 5(1) of the Occupational, Safety and Health Act 2005 reads:

*"Every employer shall, so far as is reasonably practicable, ensure the safety, health and welfare at work of all his employees."*

The charge against the Accused is couched under the Occupational Safety and Health Act. I deem it fit to refer to the case of **GENERAL CONSTRUCTION COMPANY LIMITED v OCCUPATION, SAFETY AND HEALTH INSPECTORATE, MINISTRY OF LABOUR, INDUSTRIAL RELATIONS AND EMPLOYMENT (2020) SCJ 40** which reflects the essence of the legislation, namely 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".*

For a case of this nature, the onus is on the employer to provide a safe place of work. *"It is evident that the Act imposes a duty upon an employer to ensure, so far as is practicable, the safety at work of all his employees. It casts a duty on him to provide and maintain a system of work that is safe and without risks*". (**RE: CONTAINER LIFT LTD v THE MINISTRY OF LABOUR, INDUSTRIAL RELATIONS & EMPLOYMENT AND ANOR (2014) SCJ 414).**

I have therefore considered the safety measures that were put in place for the operation of the roll pack machine. I have considered the version of the Accused as contained in the statement given to the investigating officer of the Ministry in the case. The Accused explained that the roll pack machine already had an inbuilt safety feature as at the time of manufacture. The sensor was designed and placed at the centre of the roller and to touch same, entailed the removing a heavy metal guard from its safe position and an extraneous extension of the body. The Accused provided training to the employees.

In order to establish liability, it is important to consider whether the employee, Mr Riar methodically followed the safety procedures, whether adequate safety measures had been provided to him and whether the real cause of his injuries was not his non-compliance with the measures. The Court cannot overlook the preliminary responsibilities of the employee. **(RE: MEADERS FEEDS LTD v OCCUPATION, SAFETY ANDHEALTH INSPECTORATE, MINISTRY OF LABOUR, INDUSTRIAL RELATIONS AND EMPLOYMENT (2019) SCJ 33).**

In the present case, I find that Mr Riar defied all safety measures when he actually removed a heavy metal guard which served as safety measure to extend his arm and body to overreach the sensor. In so doing, he removed a safety device to commit a dangerous act, and this is irrespective of the fact that there was an interlocking device to the roll pack machine. I find that the metal guard and the spot of the sensor were adequate measures as contained in the roll pack machine to ensure the safety of the employees. Whether there was an interlocking device or not, Mr Riar was not entitled to access the sensor by removing a safety net being a metal guard in the present case.

In the circumstances, I find that Mr Riar failed to follow the safety measures and procedures and the real cause of his injuries was the result of his own action when he failed to comply with the safety measures by removing a heavy metal guard to extend his body and arm to overreach the sensor on the roll pack machine, despite being trained and aware of the dangers associated with his action. The accident did not occur because there was no safety device. It occurred through the sole action of Mr Riar. Even if there was an interlocking device, an accident would still happen if an employee tampers with a safety measure to positively create a dangerous action.

It is to be borne in mind that the present case is one where the Prosecution elected to proceed with the case with only one witness, without Mr Riar. This has left the version of the Prosecution unsubstantiated and the version of the defence credible and unshattered.

In the circumstances, I find that the Accused has ensured, so far as is reasonably practicable the safety, health and welfare at work of its employees.

COUNT 2

Under Count 2 of the Information, the Accused stands charged with the offence of having failed to notify an accident to the Director, Occupational Safety and Health by the quickest practicable means.

The Accused has pleaded guilty to this charge. Unlike Count I of the Information where the Accused gave an explanation exonerating it from blame in his statement to the Officer of the Occupational, Safety and Health Division, the Accused made a clear and unequivocal confession to the commission of this offence in his statement given to the officer of the Occupational, Safety and Health Division in relation to Count II of the Information. Hence, the confession can be given all its weight for Count II of the Information.

It is also to be remembered that *"The best proof of guilt is the fact that the respondent pleaded guilty to the offence – vide* ***DPP v Aumont*** *[1998 SCJ 338]****; Gungadin v The Magistrate, Intermediate Court*** *[1995 SCJ 31]". **(RE: THE DPP VS RAMDEEN A H (2005) SCJ 198)**.* I find that the guilty plea of the Accused in relation to Count 2 of the Information constitutes an admission of the facts against him as couched under Count 2 of the Information.

*Conclusion*

In view of the above, I find that the Prosecution has failed to prove Count I against the Accused beyond reasonable doubt. I dismiss Count I against the Accused.

I find that the Prosecution has proved Count II against the Accused beyond reasonable doubt. I find the Accused guilty as charged under Count II of the Information, for an offence of failing to notify an accident to the Director, Occupational Safety and Health by the quickest practicable means in breach of section 85(1)(a) and sections 94(1)(i)(vi) and 94(3)(b) of the Occupational Safety and Health Act – Act No. 28 of 2005 coupled with section 44(2) of the Interpretation and General Clauses Act.

Judgment delivered by: M.GAYAN-JAULIMSING, Ag President, Industrial Court

Judgment delivered on: 10th September 2024