

OSHI v Terra Milling Ltd

2024 IND 4

Cause Number 188/21

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

In the matter of:

OSHI

v.

Terra Milling 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 – Act No.28 of 2005 coupled with Section 44(2) of the Interpretation and General Clauses Act with unlawfully failing on or about the 6th day of December 2013 to ensure so far as is reasonably practicable the safety and health at work of its employees when the said Terra Milling Ltd failed to take necessary precautions to prevent any of its employees from getting entrained in the flow of sugar inside a sugar bin (Beau Plan bin) at its place of work at Belle Vue Mauricia.

At this stage, in view of the fact that both the Prosecution and Defence were all throughout the trial aware that the place of work of Accused was at Belle Vue Mauricia, Mapou which can be gleaned from the evidence borne out by the record, the information is amended *proprio motu* by the Court in conformity with Section 73 of the District and Intermediate Courts (Criminal Jurisdiction) Act so that the word

“Mapou” is added to “*Belle Vue Mauricia*” so that it will now read “*at its place of work at Belle Vue Mauricia, Mapou*” because there is nothing to suggest that the Accused has been misled or prejudiced in any way in the preparation of its Defence and such defect in the information is being cured solely for the purpose of tallying with either a conviction or an acquittal (*vide – Venkiah v R [1984 MR 62]*).

The Accused’s duly authorized representative namely Mr. Azhaar Hossenbaccus in his capacity as Safety and Health Officer as per Doc. F pleaded not guilty to the information and was assisted by Counsel at his trial.

However, when a statement was recorded from him under warning on the 14.9.2020 as per Doc. G in relation to the present charge of 6.12.2013 by the enquiring officer viz. Mr. Pradeep Bhowany and which involved its three employees namely C.H. Nizelin, A. Chummun and V. Sonagadu, after he was shown the report of Dr. S.K. Gungadin, death certificate of C.H. Nizelin, 3 photographs taken by the officer on 7.12.2013 and 2 photographs further taken on 19.12.2013 by the same officer on the site of the accident, the report of Mr. Rohoman (mechanical engineer) wherein it was concluded that a safe system of work was not provided and the officer’s report and conclusion that Accused had failed to ensure the safety and health of its employees in breach of the above provisions, he stated that he took note of the documents shown to him and that the accused company reserved its rights as regards to same but he did not deny liability.

The case for the Prosecution unfolded as follows:

Mr. Pradeep Bhowany in his capacity as Chief Occupational Safety and Health Officer gave evidence in Court. He was the main enquiring officer in relation to the present accident whereby late Charles Hardwick Nizelin as per his death certificate (Doc. B), helper, employed by Accused sustained fatal injuries as per Doc. A. on 6.12.2013 when he was entrained in the flow of reject sugar inside a sugar bin (Beau Plan bin) belonging to the Accused together with his two colleagues namely Mr. Anil Chummun and Vicky Sonagadu who were injured as a result at its place of work at *Belle Vue Mauricia, Mapou* following the opening of one of the 8 gates of the sugar bin.

On 7th and 19th of December 2013, he proceeded to the locus of the premises of the accused company at its factory at Mapou. In that context, on

7.12.2013, he took 3 photographs of the sugar bin concerned in the present accident. The first one (Doc. C1) was an overall picture of the sugar bin and the lorry below it. The second one (Doc. C2) was the lever of the gate shown by Mr. Y. Soowamber being the lorry owner and driver and which he actuated to remove sugar from the sugar bin when the accident happened. The third one (Doc. C3) was a picture of the lever of a gate and a piece of metal without padlock used to keep the gate in a closed position.

On 19.12.2013, he took a photograph of a fixed vertical ladder giving access inside the sugar bin as per Doc.C4. On that day, he also took another photograph of the lever of the gates provided with padlocks as per Doc. C5.

His observations were that there were two Sugar bins at Accused's factory for the storage of reject sugar to be transported to its melting station by the sole usually hired lorry owner and driver namely Mr. Yoganand Soowamber during crop season only. The sugar bin concerned in the present case known as 'Beau Plan bin' meaning it was an ex 'Beau Plan bin' as it belonged to the Accused and was of dimensions 19 m long, 5 m wide and 7.5 m high. That sugar bin was equipped with eight gates at its base and the fifth one was in an open position. The private lorry of Mr. Soowamber was parked below the fifth gate and his lorry box was full of sugar.

Each gate was attached to a separate lever which was used for the opening and the shutting of it when activated which meant that there were 8 gates attached to 8 levers. There was a platform all along the sugar bin to reach to the respective levers. To get access to that platform, one had to climb up about 2-3 small steps and once there as per Doc. C2, the lever could be activated by standing on that platform. As per Doc. C3, the end of the lever was far from the gate. There was a piece of metal without padlock and while handling that lever, one had to remove that piece of metal which would initially block its activation. When that piece of metal was removed first, that the lever could be activated in order for anyone to open and shut the gate.

Doc. C4 related to Doc. C3, and it was taken after the present accident and it was an access to the sugar bin leading to its fifth gate. Had there been a padlock, that piece of metal would not have been removed which was the new system adopted after the accident. Thus, the padlock had to be opened first and removed and then the piece of metal was to be removed next in order to have the gate open as per Doc. C4 showing the open gate. The padlock was fitted in the 2 bars which

were retaining that piece of metal and which was fitted afterwards. There was only one access inside the sugar bin which was *via* the ladder as per Doc. C4 which was the top part of the sugar bin and once inside, one could have access to all its parts. From the top inside, one could have access to the ladder. From that platform where the levers of the gates were to be found, there was no visibility inside the bin from the outside. Inside the bin, it was not subdivided into 8 parts because of the 8 gates, but it was only one full open space.

His enquiry revealed:

On 6.12.2013 at around 13.00 hours, the driver of a private lorry, Mr. Yoganand Soowamber was transferring sugar from the sugar bin concerned to the melting station of the factory (Terra Milling Ltd) which was 100 metres away on the same premises and was assisted by a lorry helper namely Mr. J.E.Begue. At a certain moment during the transfer, he informed Mr. Steeve Begue, foreman at Terra Milling Ltd, that there was an insufficient amount of reject sugar coming out of the said sugar bin.

As a result, Mr. S. Begue gave instructions to Charles Hardwick Nizelin, Anil Chummun, Vicky Sonagadu and Beenaye Sookun, employees of Accused to enter inside the sugar bin and to scrape sugar stuck on its inner surface. At around 16.00 hours, B. Sookun was seated on a cross bar situated inside the sugar bin and was scraping sugar while others were standing on the sugar itself, to continue the scraping exercise.

At that time, the team inside the bin was in the vicinity of the fifth gate when suddenly the gate found at the bottom of the bin was opened from the outside and sugar started flowing down through that gate. Late C.H. Nizelin, A. Chummun and V. Sonagadu who were standing on the sugar got entrained in the flow of the sugar and were submerged by it. At that moment, B. Sookun came out of the bin rapidly to seek help from other employees. The three employees were rescued and were immediately transported to SSRN Hospital. Charles Hardwick Nizelin passed away at the hospital on the same day and A. Chummun and V. Sonagadu were admitted for treatment.

From the start of the crop season 2013, Mr. Y. Soowamber was the only private lorry driver to do the transfer of sugar from the sugar bin to the melting station

of the factory. The gates of the bin could be opened from the outside by activating the lever provided for each gate. Mr. Soowamber was loading sugar into the lorry box by activating himself the lever of the gates. It was a current practice for him to activate the lever of the gates for removal of sugar. He was not aware that workers were scraping sugar inside the sugar bin. At around 16.00 hours, he was in his 5th trip and he activated the lever of the fifth gate when the accident occurred.

The enquiry has revealed the following failures on the part of the employer as per his report namely Doc. L:

- (i) A risk assessment was not carried out to assess the risk involved in allowing workers to work inside the sugar bin.
- (ii) The risk assessment would have enabled management to detect the risk involved while performing the scraping work and the sudden opening of the gates.
- (iii) As it was not safe to stand on the sugar itself, the workers should have been provided with either a safe working platform to perform the work or safety belts to prevent them from being entrained by the sugar falling down the sugar bin.
- (iv) The employer has failed to establish a safe system of work and safe working procedures to enable the work to be performed safely.
- (v) Management has also failed to provide training to the employees performing the scraping work.

The safe system of work that should have been adopted by the company in the present case as per his report (Doc. L) is as follows:

Carry out a specific risk assessment for performing work inside the sugar bin.

Establish a schedule of work when:

- (i) allowing the lorry to remove sugar from the sugar bin and
- (ii) performing scraping work inside the said bin. (Both operations need not be done at the same time).

When scraping work is to be performed, the following steps have to be followed:

- (i) Ensure that the workers are provided with life line and safety harness.
- (ii) Provide a safe working platform inside the bin to perform the work.

- (iii) Ensure that adequate supervision is exercised.
- (iv) Padlock the gates below the sugar bin and key kept in custody of Bagging Superintendent before performing scraping work inside the sugar bin.
- (v) Issue a permit to work by the Bagging Superintendent to the Supervisor for performing scraping work inside the sugar bin.

On 25.8.2014, he recorded a statement from Mr. Dayanand Kurrumchand (Plant & Operations Manager who was delegated to represent Accused for this enquiry as per Doc. D) wherein he denied liability. However, he admitted therein (*vide - Doc. E*) that a copy of the risk assessment submitted to the relevant Ministry on the day of the accident, activities regarding scraping of sugar were not covered in the risk assessment.

He mentioned therein –

- (a) On the day of the accident, a work permit was not issued by the Bagging Superintendent regarding the activity of scraping sugar inside the sugar bin because that task was not planned to be carried out.
- (b) On that day, the foreman, Mr. Steeve Begue should have had instructions from the Bagging Superintendent who issued the work permit.
- (c) Then, he conceded that the work permit did not include the activity of scraping in relation to the sugar bin.
- (d) Mr. Soowamber was not authorised to open the gate of the sugar bin.
- (e) He had only to convey sugar in his lorry between the packing area and the melting station.

In the course of his enquiry, another representative of the accused company namely Mr. Nunkoo remitted a risk assessment to him on the day of the accident dated 27.7.2012 as per Doc. H. The latter made no reference to the work as regards the sugar bin and the scraping of sugar inside the sugar bin as it was only a general risk assessment. He was also remitted a training program that was conducted on Accused's premises as per Doc. J and a model of a Work Permit as per Doc. K. He was aware that the Work Permit was a responsibility of the Bagging Superintendent, Mr. Clarel Ducray. On the material date namely on 6.12.2013, no work permit was issued. The model of the Work Permit was not followed. The health and safety officer had to examine the sugar bin and to look at the different risks associated with the work inside the sugar bin and then to make recommendations. Without the provision of a platform inside the sugar bin, management had failed to provide

training. The training contemplated as per Doc. J was a general one on health and safety aspect. There was no mention as regards the scraping of sugar inside the sugar bin.

There was no safe system of work and working procedure established before the accident. It was only after the accident that management had devised a safe system of work by making provision for procedures to be carried out for that specific work namely scraping of sugar inside the sugar bin as per Doc. M which was issued on 20.12.2013.

Mr. S.I.A. Rohoman in his capacity as Mechanical Engineer gave evidence in Court. On 7.12.2013, he was an Occupational Safety and Health Engineer on the Mechanical side posted at the Occupational and Safety Inspectorate. He proceeded to the locus of the accused company on that day. He took a photograph of the sugar bin and thereafter put up a report dated 21.4.2014 as per Doc. N. wherein he concluded that no safe system of work was in place at the time of accident resulting in Mr. C. Nizelin, deceased, to fall into one of the gates which was opened by a person from outside.

He recommended that padlocks be used and that for every gate there should have been a separate and distinct padlock. It was only when the workers got out of the sugar bin that the padlocks had to be removed.

He stated that a padlock would have prevented someone from opening any gate if it was closed. If there was someone inside the sugar bin, nobody from outside would have been able to open any of its gates if he was not in the possession of the key which had to be kept with someone strictly responsible for that because it was an activity in itself like an Assessment Officer.

Mr. Y. Soowamber gave evidence in Court. Usually, as from the year 2010, he was informed through phone during crop season only that his services were needed by the Accused to remove reject sugar from its sugar bin to be transported to its melting station found on the same premises with which he was familiar. Thus, on 6.12.2013 around noon, he was informed through phone by Mr. D. Kurrumchand to do so and he drove his lorry bearing registration number 4438 JL 08 in the yard of Accused together with a helper called Mr. N. Begue. Normally he placed his lorry below the sugar bin. There was a small staircase to go up on the side. Then only,

he could reach a step to a platform where there were metal bars and levers giving access to have the gates opened. There were 8 levers in all which were on that platform. He identified himself in the photograph as per Doc. C2 which was taken on 7.12.2013. He was pointing to the lever which was held by a piece of metal without a padlock and which had to be removed for the lever to be activated in order to open the intended gate. From there, as per Doc. C2, he could not see what was in the sugar bin on top of his head as it was closed completely.

On the material day, he started removing sugar from the sugar bin about noon and he did a few trips and then without his knowledge, workers put people to scrape sugar inside the sugar bin and to do the cleaning which normally had to be ordered by the foreman. That was the case as it appeared that there was no sugar and then a lot of sugar came falling down. He was not aware that people got inside the sugar bin in order to scrape sugar. Normally when sugar had been removed from the 8 gates, he was the first one to know that sugar stopped falling down. It was then only that he would tell the foreman that there was no sugar. Then only, the foreman would put people to do the scraping work because some sugar would have got stuck on the surface of the inner panel of the sugar bin and they would have to scrape that sugar with a spade. But, he did not complain to the foreman that there was not enough sugar falling. At the time of the accident, he was near the 4th gate when he saw a spade which fell and the lever had already been activated by him by that time and sugar was falling. The amount of sugar falling was the full amount and then the spade fell together with the sugar. He thought that someone forgot his spade inside. Then, a short while after, he saw two feet coming from where sugar was falling at the exit of the gate. He called the people nearby and the gate could not be closed as the two feet were still squeezed there. Those people went upwards and then they could remove the person who was Mr. Nizelin. Each time, he brought sugar from the sugar bin to the melting area, no one ever prevented him from activating the lever for the respective gate to open. He was not told by the Accused about the procedure to be adopted before the lever was activated. He was never told that there was a Shunting worker who was the only person to receive instructions from Mr. S. Begue to open the gate of the sugar bin. Mr. Steeve Begue in his capacity as foreman for the Accused gave him instructions to remove sugar and did not ask him to open the gates. However, no one at accused company told him or drew his attention since year 2010 that he should not have opened the gates as he was not authorized to do so before transporting reject sugar in his lorry to the melting station. He was authorized to open the gates since year 2010 and all the time he and his helper

opened them, collected the sugar and left. He had never in the lapse of years 2010 to 2013 been told that he was formally prohibited from using the levers.

Mr. B. Sonagadoo in his capacity as Maintenance Officer gave evidence in Court. On 6.12.2013, he was employed by the Accused solely in the packing section also known as bagging section where sugar was packed. Mr. C. Nizelin was his colleague and was working with him doing the same job. He took instructions from Mr. Steeve Begue who was a Supervisor in the packing team and he called them on that day telling them that not enough sugar could be obtained from the sugar bin and that stuck sugar had to be scraped from inside. Then, they got into the sugar bin and were scraping sugar. It was the first time that he worked inside that sugar bin. But Mr. Nizelin did get inside before as he told him so. They were three in all as there was also one Anil Chummun inside that sugar bin. They used the ladder as per Doc. C4 to get inside it. There was sugar stuck in its panels and they had a scraper to scrape the stuck sugar for it to fall through its exit. To work inside, they used to wear their normal clothes and slippers.

On the material day, about half of the sugar bin had sugar stuck inside about 13-14 metres high and which had to be scraped. They started scraping sugar from the top and they stood on the sugar which crumbled down. As the sugar already contained heat, it was hot inside and that was why they changed their clothes and wore a short pair of trousers and a normal T-shirt. Normally they were provided with a pair of safety shoes to wear inside the sugar bin. But they did not wear it as sugar would get inside and that was why they put on their slippers to stand on the sugar. It was hot inside and they sweated a lot and were wet completely while they were scraping sugar. While working inside the sugar bin, they could not see what was happening outside and nor could they hear as it was a closed place. They had a tube light inside and they also had a torch light which they used. They did not have helmets nor safety belts as they went through the ladder with only a scraping device and that was all. While they were doing the scraping work, there was nobody from outside supervising their work. Only the three of them and Mr. Steeve Begue knew that they were working inside the sugar bin. While they continued doing the scraping work and were standing on the sugar, as the sugar fell on them, they got submerged with it. One of his colleagues who was above them on a metal bar was doing the scraping work. Then, they were covered with sugar and moving downwards and he lost consciousness. He thought that if sugar was going down meant that someone

opened the gate. When he regained consciousness, he was in a hospital in the north. He did not know who had the right to open the gate.

Mr. Jean Steeve Clifford Begue gave evidence in Court. On the material day, he was working for the Accused when Mr. Nizelin, his colleague, passed away following injuries sustained by him. He was controlling the sugar coming and leaving the said lorry which was his job and he had been working for the Accused for 32 years and at the material time, he was working as Foreman but it was not official yet. He was a Supervisor simply giving a helping hand. The scraping work was done during crop season. On 6.12.2013, he was the one who gave instructions to Mr. Sonagadoo, Mr. Nizelin and another worker to do the scraping of stuck sugar in the sugar bin. He was ordered to do so by his Superior, Mr. Clarel Ducray who was the Bagging Superintendent. It was only a worker from the Bagging section who opened the gates of the sugar bin and who was called the Shunting worker. The latter who took instructions from him to open the gates was there for the whole day as it was his job. But he had to receive instructions from him to open and close the gate but yet, he did do so on his own because he was not there on the locus for the whole day. Mr. Soowamber who was the driver of the lorry on the day of the accident was not an employee of Accused but his services were retained by the Accused for the transportation of sugar from the sugar bin to the melting section. Mr. Soowamber at no time was authorized to open the sugar bin himself nor his lorry helper, working together with him. He was not present at the material time to witness the opening of the gate which was the cause of the accident. In order to activate the lever for the sugar to fall into the lorry, normally there was a communication between the lorry workers and the workers doing the scraping work on top. It was an employee from the Accused who had the right to activate the lever for the gate to open. The workers inside the sugar bin stood on the sugar bare feet to do the scraping work because wearing shoes would make their task complicated. There was no protocol at that point in time as to how to do the scraping work. There were no oral instructions and the employees were entrusted work based on their experience. While they were doing the scraping work, he was in the packing department and was not with them. There was no one to supervise them as the team doing the scraping work was used to do the job and knew how to do it because of its experience like Mr. Sookun and Mr. Nizelin. There was no work permit issued to carry out that type of work. He learnt through his colleagues that there was an accident in the sugar bin at about 3.30-4.00 p.m. whereby Mr. Nizelin was found unconscious and subsequently passed away. It was after the accident that he learnt about work permit although it

might be that the notion of work permit was there since 2012, but he thought there was not. The person responsible for the work permit was his Supervisor namely Mr. Clarel Ducray. On 6.12.2013, the procedure of work permit was not followed for scraping of sugar inside the sugar bin. He did not agree that each time there was a shunting meaning to activate the lever to open the gates, the worker had to seek instructions from him.

Mr. Anil Chummun gave evidence in Court in his capacity as stone mason. On 6.12.2024, he was working for the Accused in a team of 4 persons namely Charles Nizelin, Vicky Sonagadoo and Beenaye Sookun. Their job on that day was to carry bags of sugar to fill a lorry. Then, their Supervisor, Mr. Steeve Begue gave them instructions in the afternoon to do another job to scrape reject sugar from the sugar bin. He had to climb up a ladder and did the work with his bare feet, a pair of short trousers and a T-shirt as it was hot inside. On 6.12.2013, it was not the first time that he went to work in the sugar bin. He put his bare feet on the sugar meaning which was already inside the bin. He had no safety equipment. When he got inside the sugar bin, he had his colleagues namely late Charles Nizelin, Vicky Sonagadoo and Beenaye Sookun. They had to scrape the stuck sugar on the inner panels like ice blocks for it to fall down. They used to work like that and did not stand on any platform nor did they have any security seat belts and were not given instructions to use them. They could not be seen from outside while working inside the sugar bin. Before the accident, at some point, sugar was not falling down at the bottom. At some point, Vicky Sonagadoo, Charles Nizelin and he got entrained in the downward flow of sugar and were submerged with sugar. His friend Sookun got hold of a bar and managed to climb down and also came to help them. He got to know that Mr. Sookun asked workers to close the gate as people working inside were covered with sugar. Big balls of sugar hit their bodies everywhere while they got entrained in the flow of sugar. At some point he swallowed sugar and breathed the sugar. After some time, they saw Charles Nizelin who did not look normal as if he lost consciousness. He was bruised and was admitted to hospital for one day by Accused. There was no paper of which he needed to sign before doing such work as it was not the system of work in place. There was no work permit to work in the sugar bin. He was only instructed by Mr. Steeve Begue who was his Supervisor and foreman that he had to get inside the sugar bin and work there. He was aware that there was someone employed by the Accused to open the required gate of that bin. On the day of the accident, he was not aware who opened the gate and till to date.

Mr. Beenaye Sookun in his capacity as Maintenance Officer gave evidence in Court. He was an employee of Accused on 6.12.2013 doing the shunting job and not the bagging work. On 6.12.2013, he went to work in the sugar bin as per Doc. C1 to scrape sugar as instructed by the foreman, Mr. S. Begue at about 2.30 p.m. He was doing the shunting work since the morning and the team doing the scraping work turned up at about 2.00 p.m. Mr. Charles Nizelin, Mr. V. Sonagadoo and Mr. Anil Chummun formed part of the team. Each year they used to work in the sugar bin after the harvest was completed and which was only once a year. He was working with his shoes as he was doing the shunting and it was when they had to go inside the sugar bin, then they had to remove their clothes to wear a pair of shorts and a T-shirt and had to remove their shoes as they had to be bare feet as they got onto the sugar. For the scraping work on 6.12.2013, they had to get inside the sugar bin to do that job and to stack the sugar. Suddenly the gate opened at the bottom. There were 8 compartments in the sugar bin. They had already scraped sugar for the first 2 compartments and when they were doing so for the third one when the gate opened. At that time, he was inside the sugar bin on the sugar and Mr. Nizelin was together with him.

They were scraping sugar while standing on the sugar to scrape from all the panels. They used a scraper, a spade, a pike and a hoe to do so. They were scraping from the third compartment and its gate was found in the middle. Suddenly, the gate opened and they were submerged. Inside the sugar bin, there were bars and he succeeded in getting hold of one of them while the 3 others namely Nizelin, Chummun and Sonagadoo got covered completely with sugar as they got entrained into the flow of sugar moving downwards. Had there not been that bar, he would have got entrained in the sugar like them. He went out and cried for help. Then someone came and stopped all operation. He could not take any security equipment as he had to stand on the sugar itself to do the scraping work. There was no space to put safety equipment. There were no security belts as they were not working at a height as they were standing on sugar. Before working in the sugar bin on the material day, he was not made to sign any document and he was not given any permit to work there. On that day, the scraping work was not over and they were ordered to so and which they could not refuse.

Mr. Nicholas Michaud in his capacity as HR Officer gave evidence in Court for the Defence.

He had been HR Officer at accused company since September 2010. His duties were mainly in the industrial relations and advice, support and service to other departments. He was aware of the accident that took place on 6.12.2013. He was not present when the accident happened.

There was a memo from the accused company dated 10.7.2012 wherein the General Manager at that time, Mr. Jean Arthur Pilot Lagesse that following an accident at work which occurred on 22.6.2012 having serious consequences on the organization, there was an annexed copy of a work permit suggested to be obligatory for risky work as per Doc. K. The work permit was an official document that was issued and filled in by the one responsible, for example, the Bagging Superintendent in the presence of the worker and agreed on the work to be done. He confirmed that Doc. K was a model work permit and that it should have been signed by both the representative of the accused company and the employee. He thought that it should be necessary for the scraping of sugar in the sugar bin but he did not know whether it had been issued or not. He was not aware whether a work permit was issued on the day of the accident. He was not aware of the layout of the sugar bin and where the gates of the sugar bin were situated. He had never been inside the sugar bin. It was not for the first time that the services of Mr. Soowamber were retained by the accused company. In fact, he was responsible for the transportation of sugar from the sugar bin during the crop season. The Doc. K was a memo from Mr. Lagesse and it was not signed. It referred to a previous accident that occurred at the premises of the accused company and according to his instructions issued on 10.7.2012 which was a suggestion to the attention of Heads of department and not to the helper or employees involved in the sugar bin on the material day. As per Doc. K, the Heads of department should have ensured that the recommendations contained in the work permit were implemented and that it would have been mandatory.

I have given due consideration to all the evidence put forward before me and the submissions of both learned Counsel for the Prosecution and for the Defence.

The representative of the Accused who deposed under oath was not the one whose out of court statements were produced in Court as per Docs. E and G and he was of no help to the Court. It remained unrebutted that on the material day, Mr. C. Ducray, the Bagging Superintendent who was the Superior of Mr. S. Begue, the foreman, instructed the latter to do the scraping of reject sugar inside the sugar bin

concerned and that Mr. D. Kurumchand, Accused's employee, phoned the lorry owner and driver viz. Mr. Y. Soowamber to carry the reject sugar from the sugar bin concerned to the melting station of Accused's factory. The testimony of the Shunting worker remained unrebutted that although he was in charge for the opening of the gates of the sugar bin, he was scraping sugar inside the bin at the time of the accident which clearly meant that the gate was opened by someone else which is in line with the unrebutted testimony of Mr. Soowamber that he did so as usual since the years 2010 till 2013 as there was no such Shunting worker let alone that not even Mr. S. Begue nor the other witnesses and nor the representative of the Accused who deposed in Court could give the name of that Shunting worker.

Now, it is imperative to note that Mr. S. Begue admitted that on the material day although he was in charge for ensuring the amount of sugar getting into the lorry from the sugar bin, he was not present for whole day on the premises although the shunting worker was authorized by him to open the gates of the sugar bin. The shunting worker had to open the required gate following communication with the lorry workers and the workers doing the scraping activity inside the sugar bin according to Mr. S. Begue, but which was not done at the material time as the testimony of the Shunting worker namely Mr. Sookun remained unchallenged that he was scraping sugar inside the sugar bin at the material time which is further corroborated by the unrebutted testimony of his colleague, Mr. Anil Chummun.

Furthermore, there is no evidence as to who was the person in charge for such communication between the two sets of workers bearing in mind that one set could not be seen from the outside. Indeed, the Shunting worker, Mr. Sookun, at no time deposed to the effect that on the material day, he was in direct communication with the workers doing the scraping job inside the sugar bin and the lorry workers in order to know when to open its required gate by activating its unpadlocked lever by standing on the platform. On the contrary, he deposed to the effect that at the material time he was scraping sugar inside the sugar bin and that at some stage he found support with a cross bar and thus was not entrained in the flow of sugar like his three other colleagues namely the deceased viz. Mr. Nizelin, Mr. Sonagadoo and Mr. Chummun following the opening of one of the gates of the sugar bin.

Therefore, it is abundantly clear that there was no one in charge for such communication in the sense that there was no proper supervision in place at the material time let alone that it remained unchallenged by all the witnesses that the

workers inside the sugar bin had to stand on the sugar itself either bare feet or with slippers on as there was no platform inside to do so and that they were not provided with a seat belt or safety harness as they stood on the sugar and were not working from a height.

Obviously, it is clear enough that such a lack of supervision explains why no work permit was issued by the Bagging Superintendent at the material time to the workers doing the scraping activity inside the sugar bin as they did not follow training (which is compatible with the unrebutted testimony of Mr. S. Begue that the workers were chosen by virtue of their experience and the training contemplated as per Doc. J was a general one on health and safety aspect without any mention as regards the scraping of sugar inside the sugar bin) because no risk assessment exercise was carried out for that specific purpose which is compatible with the unsworn admission of the Accused as per Doc. E. Thus, the Accused took a list of remedial measures after the accident as per Doc. M.

Therefore, the risk of injuries being caused to any worker of Accused and even leading to death is imminent as demonstrated in the present case (see- **The D.P.P. v Flacq United Estates Ltd [2001 SCJ 301]**) let alone that no Accused's expert nor its representatives deposed to the effect that for the whole procedure involved in the removal of the reject sugar including the scraping exercise from the sugar bin concerned to be brought to the melting station of the accused factory, it was not reasonably practicable for the Accused to do more than was in fact done to satisfy the duty or requirement of safety, or that there was no better practicable means or step than was in fact used or taken to satisfy that duty or requirement of safety pursuant to Section 96(6) of the Occupational Safety and Health Act 2005 and which reads as follows:

"96. Special provisions as to evidence

- (6) *In any proceedings for an offence under any provision of this Act consisting of a failure to comply with a duty or requirement to do something so far as is practicable, or so far as is reasonably practicable, or to use practicable means or to take practicable steps to do something, it shall be for the accused to prove that it was not practicable or not reasonably practicable to do more than was in fact done to satisfy the duty or requirement, or that there was no better practicable means or step than*

was in fact used or taken to satisfy the duty or requirement, as the case may be."(emphasis added)

Hence, I hold that the Accused unlawfully failed to take necessary precautions to prevent any of its employees from getting entrained in the flow of sugar inside its sugar bin at its place of work at the material time as it hardly ensured so far as is reasonably practicable the safety and health at work of its employees as the present accident was very predictable inasmuch as the criterion of sacrifice by the Accused to avert the risk of injuries is not grossly disproportionate (*vide - Jeanneton v Cie Sucrière de Bel Ombre* [\[1993 SCJ 455\]](#)) so that the burden laid upon the Accused has not been discharged on a balance of probabilities(see- **Talbot Fishing Co Ltd. v Ministry of Labour & Industrial Relations (Occupational Safety and Health Inspectorate)** [\[2006 SCJ 76\]](#)).

For all the reasons given above, I find that the case for the Prosecution has been established beyond reasonable doubt and I, accordingly, find the accused party guilty as charged.

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

12.2.24