

OSHI v Esquel (Mauritius) Ltd

2025 IND 62

THE INDUSTRIAL COURT OF MAURITIUS

(Criminal Side)

In the matter of:-

CN 194/2018

OSHI

v.

Esquel (Mauritius) Ltd

JUDGMENT

1. The Accused stands charged for having, so far as is reasonably practicable, failed to ensure the safety, health and welfare at work of all its employees (Count 1) in breach of sections 5(1) and 94(1)(i)(vi) of the Occupational Safety and Health Act 2005 (OSHA), and for having failed to cause an electric hand pallet truck to be thoroughly examined by a registered machinery inspector (Count 2) in breach of sections 51(1)(b) and 94(1)(i)(vi) of the OSHA. The Accused has, through its director, pleaded not guilty to both charges and was assisted by counsel for the trial.

2. Mr. Premsingh Seetohul, Principal Occupational Safety and Health Officer, who enquired into this accident at work which occurred on 17 January 2017 at the Accused's warehouse in Coromandel, gave evidence and produced the defence statement of the Accused company (**Document AB**), a report of examination of a lifting machine (**Document AC**), two risk assessment reports (**Documents AD and AD1**), his report on the accident at work (**Document AE**), a letter relating to the reparation of a broken switch (**Document AF**) and a document entitled "*Guidelines for Forklift*" (**Document AG**).

3. In a gist, Mr. Seetohul's enquiry revealed that one Razakaniaina Rondro, a Malagasy national, who was employed as Packing Supervisor, sustained laceration to her left leg when she was hit by an electric hand pallet truck (pedestrian stacker) while she was working at the Accused's warehouse. The premises were used to store goods in carton boxes stacked on metal shelves. Mr. Seetohul affirmed that it was an electric pull pallet truck that caused the accident. There had not been any risk assessment, nor examination of that machine by a registered machinery inspector as required by law. The witness was adamant that the machine involved in the accident was not a forklift.

4. Mr. Naden Naikoo, who was present at the warehouse as Supervisor at the time the accident occurred, was also called as a prosecution witness. He deposed to the effect that the injured person was not assigned to work at the warehouse at that time. She was only present on the day in question to inspect boxes and was waiting for male staff to remove the required items from the shelves. Although he did not actually witness the accident, Mr. Naikoo was of the opinion that the accident was the result of an unfortunate clumsiness on the part of Ms Rondro's friend – *"sa kinn faire accident la enn so camarade kinn zouer avec bann forklift, sa mem forklift in bouger in tap avec so li pied."*

5. No evidence was adduced on behalf of the Accused. The Accused has denied the charges in the out-of-court statement given by its representative.

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. Furthermore, section 51(1)(b) of the OSHA provides:

"51. Cranes and other lifting machines

(1) All parts and working gear, whether fixed or movable, including the anchoring and fixing appliances, of every crane or other lifting machine shall—

(a) ...

(b) *be thoroughly examined by a registered machinery inspector at least once every 12 months."*

8. By virtue of section 94(1)(i)(vi) of the OSHA, any contravention of the above provisions constitutes an offence.

9. I have thoroughly considered the evidence on record. In the absence of the injured person or any other person who has witnessed the work accident, I am only left with theories as to what could have resulted in the accident and I am in the dark as to whether it was the consequence of any statutory non-compliance on the part of the Accused. Although I do not doubt the diligence of Mr. Seetohul's investigation, I cannot escape the conclusion that his testimony rests predominantly on hearsay and on his own interpretation as to what could have actually occurred. I read the following from his report on the accident (**Document AE**):

" ...

- *Razakaniaina Rondro [i.e. the injured person] was in front of the electric hand pallet truck; near the forks while Rasoamanalimalala Harinoro [i.e. a co-worker] was at the back of the machine.*
- *Inadvertently, Rasoamanalimalala Harinoro, pull [sic] down the controller shaft of the machine.*
- *The machine moved forward and the fork hit against the left foot of Razakaniaina Rondro and sustained injury [sic].*

...".

10. Although I am mindful of the pronouncement of the Supreme Court in **The Director of Public Prosecutions v. Flacq United Estates Ltd (2001) SCJ 301** to the effect that the issue in cases as the present one is not whether the injury to the employee has been caused by the employer's, or the employee's, negligence or imprudence but rather whether the particular system of work adopted by the employer was safe in line with his statutory duty, I cannot turn a blind eye to the fact that the evidence does not satisfactorily point towards any failure attributable to the Accused.

11. I note that the electric hand pallet truck which Mr. Seetohul referred to had a broken switch which had been repaired on the day of the accident – although the exact timing of that reparation has remained doubtful. Be that as it may, the evidence of Mr. Naikoo has given rise to reasonable doubt as to whether it was in fact that very item of machinery which was involved in the accident. Indeed, whilst Mr. Seetohul was adamant that the piece of equipment involved in the accident was an electric hand pallet and not a forklift, prosecution witness Naikoo, who was present on the locus on the day of the occurrence, strongly asserted that it was a forklift which caused the injury. The evidence shows that there had been a risk assessment in November 2016 for forklifts (**Document AD**) and that guidelines were issued regarding their use as far back as July 2015 (**Document AG**).

12. On the whole of the evidence, especially in view of the unclarified inconsistencies that have crept into the prosecution's case, I have not been satisfied that there has been any shortcoming proved on the part of the Accused in relation to either charge.

13. For all the above reasons, I find that the prosecution has failed to prove its case beyond reasonable doubt under both counts. I, accordingly, dismiss the information.

25 August 2025

M. ARMOOGUM

Magistrate