

# **OSHI v Furnitech Ltd**

**2024 IND 16**

## **THE INDUSTRIAL COURT OF MAURITIUS**

**(Criminal Side)**

**In the matter of:-**

**CN 110/2023**

**OSHI**

**v.**

**Furnitech Ltd**

### **SENTENCE**

1. The Accused company, through its director, pleaded guilty to the offence of failing to notify an accident by the quickest practicable means, and that of failing to send a report of an accident within seven days, respectively in breach of sections 85(1)(a) and 85(1)(b), coupled with section 94(1)(i)(vi), of the Occupational Safety and Health Act 2005 (OSHA). The Accused stands convicted under both counts.

2. Ms S. Simmandree, Principal Occupational Safety and Health Officer testified on the facts and circumstances of this case as revealed by her enquiry. In a gist, on 24 February 2022, an accident at work occurred on the construction site of Icon Tower at Ebène whereby one Aurelien Andy Brad Warren Lingenu, who was employed as helper by the Accused, was injured. He had fallen from a height of 18 metres. The latter was conveyed to a private hospital for treatment. It was found that Mr. Lingenu had sustained fracture at his right ankle and right shoulder. However, contrary to what the law dictates, the ministry was not immediately notified of this accident at work. It was only on 07 March 2022 that the Accused sent a report about the said accident to the Director, Occupational Safety and Health.

3. In Court, the Accused's director, Mr. James Allan Smith, admitted the charges but explained that his utmost priority when the employee was found on the ground after his fall was to convey the latter for treatment. This is why the Accused forgot to inform the ministry of the accident immediately. Mr. Lingenu was conveyed to Darné Clinic, and thereafter to Wellkin Hospital where he received treatment. He had to undergo spine surgery following the accident and the Accused settled the hospital bill amounting to some Rs 1 million as the victim's family did not have the means. He produced a receipt witnessing the first part-payment of Rs 250,000. **(Document E)**. Mr. Smith affirmed under oath that the outstanding amount has been settled.

4. I have duly considered the circumstances of the case. I note from the report of Ms. Simmandree on the accident **(Document C)** that the Accused has not been found in breach of any health and safety statutory requirements. The Accused has, however, committed administrative offences by failing to notify the ministry of the work accident as quickly as possible. I have no reason to doubt the word of Mr. Smith to the effect that the priority at the time was to attend to Mr. Lingenu and that the Accused genuinely forgot to inform the ministry about the matter. I also consider the fact that the Accused settled the employee's medical bill is a strong mitigating factor.

5. Pursuant to section 94(3)(b) of the OSHA, the Accused is liable *"to a fine not exceeding 75,000 rupees and to imprisonment for a term not exceeding one year"* under each count of the information. 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.

6. In **Lin Ho Wah v. The State (2012) SCJ 70**, the Supreme Court held as follows:

*"The need to individualize sentences to each and every offender who stands convicted before the court can never be exaggerated. A just sentence which fits the offender gives greater public confidence to the public in our judicial system. Sentencing an offender was never a mechanical and willy-nilly application of the general penalty prescribed with reference to the numbers and the letters of the law. The judicial discretion to sentence inherent in our court system should not be taken for*

*granted and honoured more in the ignorance than in its application. While the formulation and application of general principles assist in obtaining a coherence in sentencing amongst the various courts of the land and while the principle of proportionality assists in obtaining a just balance between what the law prescribes and what the particular facts of the case exact, the principle of individualization concretizes the rights and freedoms guaranteed by the Constitution to the individual. A just sentence is an essential part of a citizen's right to a fair trial."*

7. Having borne the above considerations in mind, including the timely guilty plea and the Accused's clean record, I order the Accused to pay a fine of Rs 2,000. under Count 1 and Rs 1,000. under Count 2 of the information, together with Rs 200. as costs.

**30 May 2024**

**M. ARMOOGUM**

**Magistrate**