OSHI v Eastern Stone Crusher Ltd

2025 IND 72

THE INDUSTRIAL COURT OF MAURITIUS

(Criminal Side)

In the matter of:-

CN 162/2016

OSHI

v.

Eastern Stone Crusher Ltd

JUDGMENT

1. The Accused company stands charged for having unlawfully failed to ensure, so far as is reasonably practicable, the safety and health at work of its employees, in breach of sections 5(1) and 94(1)(i)(vi) of the Occupational Safety and Health Act 2005 (OSHA). The Accused has, through its director, pleaded not guilty to the information.

2. The evidence ushered in by the prosecution is to the effect that the Accused company operates a stone crusher at Petite Retraite. On 02 March 2013, five workers sustained injuries when they fell down from the head drum of the conveyor of a primary crusher on which they were standing to effect repairs. Mr. Premsing Seetohul, Ag. Principal Occupational Safety and Health Officer, who had proceeded to the locus of the accident on the following day stated in Court that he noticed that the upper part of the metal conveyor structure had collapsed. The witness highlighted that there were brown spots on the structure indicating rust. The conveyor was not properly maintained. Thus, any overload would cause it to break. A follow-up visit carried out on 03 June 2014 showed that the conveyor had been replaced and that a gate had been placed to prevent unauthorised access to the conveyor. Mr. Seetohul

produced photographs taken on 03 March 2013 **(Documents F1, F2 and F3)** and on 03 June 2014 **(Documents G1 and G2)**, respectively.

3. Under cross-examination the witness conceded that he did not mention the rusty state of the conveyor in his report but added that same could be seen from the photographs produced in Court. He denied that the access door was already in place at the time of the accident.

4. Divisional Occupational Safety and Health Officer Yogita Ramkhalawan produced the statements recorded under warning from Mr. Ashish Woochit, Director of the Accused company **(Documents H and H1)**. She also produced documents in relation to a training exercise conducted by the company's Health and Safety Officer on 28 March 2012 **(Documents J and J1)**, and copies of risk assessment documents dated 29 October 2009 **(Document K)** and 26 September 2012 **(Document L)**, respectively. Mrs. Ramkhalawan affirmed that she proceeded to the premises on 06 March 2013 and observed that the conveyor of the primary crusher was bent downwards. The conveyor was about 40 metres long and its head was some 12 metres above ground. It was rusty. There was a metal platform at the head of the conveyor which provided access to the motor which was being repaired by five workers, namely Ajaysingh Faugoo (Helper), Raj Rampur (Foreman), Satyanand Beegun (Operator), Dharmaraj Indurjeet (Operator) and Tangavel Nallan (Foreman). When the head of the conveyor collapsed, the workers were projected to the ground from a height of some 6 metres.

5. Mrs. Ramkhalawan carried out a follow-up visit on 03 June 2014 and noticed that the primary crusher had been replaced and that a door preventing unauthorised access to the conveyor had been placed on the passage leading thereto. The witness asserted that the accident could have been avoided had the conveyor been properly maintained and had the access to the head of the conveyor been limited to three employees only. She produced her report on the accident dated 20 November 2014 **(Document M)**.

6. The witness was lengthily cross-examined on the presence of an access door at the time of the accident as alluded to by the Accused in its defence statement. She maintained that the access door was set up after the accident had occurred. According to her, access to the conveyor was not restricted.

7. Mr. Ajaysing Faugoo, one of the injured persons, related how the accident occurred. On the day in question, he was instructed to assist in the reparation of a motor on the conveyor. There were five workers on the conveyor when it collapsed. He was seriously injured. There was no notice warning against access to the conveyor. He could not say whether the conveyor was rusted or whether there was any access door to the conveyor at that time.

8. In cross-examination, he admitted that there were already four people on the conveyor when he joined them. He stated that he had not had any training. He agreed that the conveyor collapsed because of excessive weight. He never noticed that the conveyor was rusted but was told about that after the accident.

9. Mr. Dharmaraj Indurjeet was next called to testify. He confirmed his presence on the conveyor alongside four colleagues when same collapsed. He stated that one can access the conveyor from both sides. He affirmed that his foreman had complained in the past about the presence of rust on the structure. He asserted that the access door was placed after the accident.

10. Under cross-examination the witness stated that, in the past, teams of up to fifteen to twenty people have worked on the conveyor. He was not trained for the specific task which was assigned to him on the day of the accident.

11. The last witness to depose in this matter was Mr. Tangavel Nallan, who was acting as supervisor on the material day. He explained that there was a mechanical breakdown on the primary conveyor to which he had to attend with a team of workers. According to him, the conveyor could withstand some ten to fifteen people. There was no notice displayed to warn of any danger. He affirmed that the access door to the conveyor was placed after the accident.

12. In cross-examination, Mr. Nallan confirmed that he had signed on the attendance sheet for a training session which was held on 28 March 2012. He added that he was told that he *"bizin protège compagnie"* when giving his statement to the labour inspectorate. He was already on the conveyor when two other workers joined. He was not told that there should not be more than three workers on the conveyor.

Mr. Nallan did not agree that it was because of the five workers' imprudence that the accident happened.

13. No evidence was called on behalf of the Accused. Its version on the accident is contained in the out-of-court statements recorded from the Accused's director. In a gist, the Accused denies the charge and places the blame on the workers who should not have been more than three at a time on the conveyor. According to the Accused, there are no safety signs on spot but a door under lock and key to restrict access to the conveyor was present at all material times.

14. 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."*

15. Pursuant to section 94(1)(i)(vi) of the OSHA, any contravention of the above provision constitutes an offence.

16. In **R v. Chargot Ltd and others [2008] UKHL 73**, the House of Lords addressed the meaning of the term *"ensure"* in relation to statutory provisions similar to our section 5:

> *"The first issue is to determine the scope of the duties imposed on the employer by sections 2(1) and 3(1). In both subsections the word "ensure" is used.* ***What is he to ensure? The answer is that he is to ensure the health and safety at work of all his employees, and that persons not in his employment are not exposed to risks to their health and safety. These duties are expressed in general terms, as the heading to this group of sections indicates.*** *They are designed to achieve the purposes* described *in section 1(1)(a) and (b). The description in section 2(2) of the matters to which the duty in section 2(1) extends does not detract from the generality of that duty.* ***They describe a result which the employer must achieve or prevent. These duties are not, of course, absolute. They are qualified by the words "so far is reasonably practicable". If that result is not achieved the employer will be in breach of his***

statutory duty, unless he can show that it was not reasonably practicable for him to do more than was done to satisfy it."

[Emphasis added].

17. In the same breath, our Supreme Court, adopting the pronouncement in **Chargot *(supra)***, had this to say in the case of **Director of Public Prosecutions v. Mauritius Meat Authority (2024) SCJ 209**:

"*What the prosecution must prove is that the result that those provisions describe was not achieved or prevented.*

Once that is done a prima facie *case of breach is established. The onus then passes to the defendant to make good the defence which section 40 provides on grounds of reasonable practicability …".*

18. Therefore, once a *prima facie* breach is established, the employer may only avoid criminal liability if he proves, on a balance of probabilities – *vide* **Talbot Fishing Co. Ltd. v Ministry of Labour & Industrial Relations (Occupational Safety and Health Inspectorate) (2006) SCJ 76** –, that he had done all that was *"reasonably practicable"* to satisfy its statutory obligation. Indeed, section 96(6) of the OSHA provides:

*"**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."

19. In the present case, it is not disputed that five employees were injured **(see Documents A to E3)** following their fall from the conveyor on which they were effecting repairs. In the light of the above principles, once that is established, it is

incumbent on the employer to show that it had taken all reasonably practicable steps to prevent that accident from happening.

20. I have considered the evidence on record and the submissions of Learned Counsel for the Accused. After careful analysis, I find that there is consistent and credible evidence on record that the conveyor was in a rusty state. I am here not only relying on what prosecution witnesses have asserted in evidence and the photographs produced. As a matter of fact, the presence of rust on the conveyor is admitted by the Accused itself in its out-of-court version. At folio 104357 of the statement dated 25 June 2014 **(Document H1)**, the Accused's director stated that *"a cause bann convoyeur ti pé montrer signe de léger corrosion, la compagnie ti deja commence remplace zot dans secondaire et tertiaire. Par mesure de precaution, en février 2013 mo ti deja acheté materiaux pou commence travail lor primaire et travail ti deja alloué à Nagen Mecanique Ltée (contracteur). Travail ti pou commence incessament."* It can, therefore, safely be concluded that the Accused was aware of the questionable state of the conveyor. The Accused, thus, failed to provide and maintain a safe place of work by allowing workers to operate on a rusty conveyor some 12 metres above ground.

21. The Accused strongly contends that the accident occurred because of the employees' own fault. According to the Accused, the workers disobeyed clear instructions prohibiting the presence of more than three persons simultaneously on the conveyor. The Accused argues that, had that rule been observed, the accident would not have happened. It is apposite here to reiterate what the Supreme Court held in **The Director of Public Prosecutions v. Flacq United Estates Ltd (2001) SCJ 301**. In that case, their Lordships made it abundantly clear that in cases of the present nature, the issue is not whether the accident occurred through the employee's own negligence or imprudence, but rather whether the employer had been compliant with its statutory duty. Hence, any attempt by the Accused to shift the responsibility for the present accident to allegedly imprudent workers is purely futile once it is proved, as is the case here, that additional reasonably practicable measures could have been taken to avoid the accident, for instance by ensuring that the conveyor was in good condition.

22. Moreover, the Accused cannot reasonably impart liability to the foremen for the presence of five workers on the conveyor to repair the defective motor. It was the Accused's duty to ensure that there is no overweight on the conveyor and a proper system of control ought to have been put in place to restrict access to the conveyor.

On the evidence before me, I have been convinced that the access gate to the conveyor was placed after the accident of 02 March 2013. Controlling access was even more pressing being given that the Accused had, through a risk assessment predating the accident, identified the danger of having more than three persons on the conveyor belt. At any rate, the existence of an access door would not have exonerated the Accused as it would still have been its duty to properly and effectively monitor passage through it. Clearly, five persons should not have been allowed on the conveyor, especially in view of its corroded state. The Accused has, thus, not established its defence on a balance of probabilities.

23. Learned Counsel has submitted that the Accused was deprived of a fair trial. He argued *inter alia* that statements from certain persons ought to have been recorded as they purportedly supported the case for the Accused. Additionally, Learned Counsel contended that documents and photographs relied upon by the prosecution as part of their case ought to have been brough to the Accused's attention at enquiry stage. After due consideration, I find that there is nothing unjust in the manner the investigation was conducted and that the Accused was given a fair opportunity to answer the charge. I am satisfied that the Accused was aware of the case it had to meet and was not in any manner whatsoever handicapped in the conduct of its defence. I am, therefore, satisfied that the Accused benefitted from a fair trial.

24. For all the above reasons, I find that the Accused has unlawfully failed to ensure, so far as is reasonably practicable, the safety and health at work of its employees. I, therefore, find the charge proved beyond reasonable doubt. The Accused is found guilty as charged.

22 October 2025

M. ARMOOGUM

Magistrate