

OSHI v Grewals (Mauritius) Limited

2025 IND 57

Cause Number 122/22

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

In the matter of:

OSHI

v.

Grewals (Mauritius) Limited

Judgment

Accused being an employer is charged under section 5(1) and section 94(1) (i) (vi) of the Occupational Safety and Health Act 2005 – Act No.28 of 2005 coupled with section 44(2) of the Interpretation and General Clauses Act with unlawfully failing on or about 19 December 2019 to ensure so far as is reasonably practicable, the safety and health at work of one of its employees namely one Nicol Goonniah who sustained traumatic amputation of 2nd, 3rd and 4th distal phalanx of his right hand while assisting a machine operator to cut iron sheets on a machine at its place of work at Grewals Lane, Pailles.

The Accused representative pleaded not guilty to the charge and was assisted by Counsel.

The evidence led by the Prosecution unfolded as follows: -

Mrs. P.S. Chummun Doorgakant gave evidence in Court in her capacity as
Principal Occupational Health and Safety Officer.

She enquired into an accident at work which occurred on 19.12.2019 at the Iron Sheeting Section of Grewals (Mauritius) Limited situated at Pailles where Mr. Nicol Goonniah sustained injuries in line with the information (Docs. A(A1-A4)). She took 7 photographs on 15.1.2020 when she attended to the locus of the accident as per Docs. B(B1-B7). The first photograph (Doc.B1) showed Mr. F.J. Deriviere showing the Iron Sheeting to be cut into pieces in the guillotine machine which was involved in the present accident. Doc. B2 showed the guillotine machine on which Mr. Goonniah was assisting Mr. F.J. Deriviere and which had a metal grid. Doc. B3 showed that the guillotine still involved different angles with the metal grid in place in the feeder part of the machine. The Doc. B2 showed the guillotine machine in whole and it showed the feeder part of the machine. Doc. B4 showed a closer view of the metal grid which was placed after the accident. There was the metal grid in place which would have prevented the accidental contact of fingers if ever they came near the feeder part of the machine. There were buttons involved in the machine. There was an emergency switch which could be used to stop the machine in case of emergencies and there was the foot pedal which had to be pushed to cut the iron sheet. In the course of her enquiry, she received a copy of a Risk Assessment from the accused employer dated 7.5.2018 on 15.1.2020 as per Doc. C. She also received a copy of a document relating to training from the employer as per Doc. D. She recorded a statement from the Accused's representative namely Mr. Tadebois Marie Sebastien Bruneau under warning on 6.10.2020 as per Doc. E.

The circumstances of the accident were as follows:

1. On 19.12.2019 around 11.45 hours, Mr. Nicol Goonniah was assisting Mr. Fabrice Jean Clair Deriviere, machine operator, to cut iron sheets on a cutting machine(guillotine).
2. While he was pushing the sheet towards the feeder part of the machine, the operator pressed the foot pedal on the floor to activate the blade of the guillotine.

3. Subsequently, the blade descended on Mr. Goonniah's right hand fingers and he sustained traumatic amputation of 2nd, 3rd and 4th distal phalanx of his right hand.

On the day of her investigation on 15.1.2020, the locus of the accident at Grewals Lane, Pailles was observed by her and she also gathered information as follows:

- (a) The machine had 3 emergency buttons.
- (b) The guillotine/blade was about 3 metres long. The opening between the blade and the feeder part was about 10 centimetres.
- (c) A metal grid was found to be in place on the feeder part of the machine to prevent accidental contact with the descending blade of the machine.
- (d) Once the pedal was pressed by foot, the blade descended on the iron sheet to cut it.
- (e) No guard was in place at the material time of accident.
- (f) Prior to the accident, Mr. Deriviere had removed the grid since it was scratching the iron sheet, exposing the blade where it could come into contact with the hands of the operator/helper. They continued working without the guard.

Her enquiry revealed –

- (i) No safe system of work was in place in the accused company preventing any worker from removing any guard in place while operating the machine.
- (ii) A procedure for the removal of guarding if required at all namely during maintenance of the machine was not in place.
- (iii) As per the risk assessment (Doc. C) carried out by the Accused on 7.5.2018, no mention was made regarding risks associated with the blade of the guillotine.

(iv) Mr. Goonniah who had recently joined the accused company in mid-November 2019 had not received training on how to operate the said machine.

After her enquiry, she drew a report as per Doc. F encompassing the above.

In order to prevent the accident, a fixed guard should have been in place which could not be removed by the employee. If ever there had to be maintenance services on the machine, a safe system of work should have been in place to identify the procedures to be adopted as to how the guard could be removed for maintenance only.

Under cross-examination, she conceded that for the blade to descend on the iron sheet, the operator had to press his foot on the pedal. Before pressing on the pedal, the operator had to ensure that the blade did not represent a danger for him and for the person assisting him. Therefore, the operator should not press on the pedal until he was certain that there was no exposure to the blade.

However, she did not agree that if the accident occurred and Mr. Goonniah was injured, it was because the operator failed to take those basic and elementary precautions before activating the blade. The reason being that because if the metal grid was in place, even if the pedal had been pressed, the fingers of the injured person would not have come into contact with the blade. It was the work of the guard to prevent any accidental contact between the fingers and the cutting part of the machine.

But she further admitted that it was not just the guard which was in question as there was a human interaction namely an operator who was activating the cutting machine for the blade to descend and that the guard would have helped. She did not agree that the accident happened because of the negligence and lack of caution of the operator.

She further stated that the said removal of the grid itself was not good practice on its own and a safe system of work should have catered for that. The guard was not in place and that was why the accident occurred. Mr. Deriviere had been trained to operate the machine by Mr. Pascal Le Coq. He was fully aware of the machine operating procedures but only the operator had received training. Mr. Goonniah was

employed as a helper and not as an operator and as such he was assisting Mr. Deriviere which consisted in holding the iron sheet but not operating the machine. The company had provided the workers with all necessary personal protective equipment to work on machines. On that specific machine, only gloves would have been required.

She enquired from Mr. Deriviere that he had no right to remove the metal guard, or any other operator for that matter, to remove the metal guard from that machine. But she was not aware whether Mr. Deriviere had received authorization to remove that metal guard. Normally the metal guard should have been removed by the maintenance department represented by Mr. Ravi Sham. She was not in a position to say that Management was not aware or was not made aware that the metal guard had been removed.

Mr. Nicol Goonniah, the injured person, gave evidence in Court.

He had been working as helper for the Accused company for less than a month. On the material day of the accident, that is, on 19.12.2019, it was Fabrice meaning Mr. Deriviere who was cutting the iron sheets and he was only holding them. His job was only to hold and measure the iron sheets which were to be cut by Fabrice. It was when he had placed the iron sheet down to be measured and his hand was inside the machine when Fabrice pressed the pedal, the blade descended and cut his hand so that he was injured and his three fingers were cut by the machine. His fingers were not placed on the guard as that guard was removed and he did not know who removed it. The operator with whom he was working was Fabrice Deriviere. As a result of the accident, he could not close his right hand properly and there was a lack of strength.

Under cross-examination, he conceded that Mr. Deriviere had explained to him how the work was to be carried out, what should be done and the precautions that had to be taken. He was aware that he had to be careful when holding an iron sheet. Mr. Deriviere pressed on the pedal before the blade descended and Fabrice was aware not to press the pedal as long as his hand was in danger. He too had to ensure that his hand did not pose a risk to injury in asking Fabrice to stop and not to press the pedal. On the day of the accident, it was not the first time that he was assisting Fabrice but on several occasions. He knew the system of work well. He knew that there was a guard in the machine and that it was not present at the

material time of the accident. He was aware that he was normally not supposed to work on that machine when the metal guard had been removed. He agreed that he should have refused to work viz. holding the iron sheet when the metal guard had been removed and the accident would not have occurred. He further accepted that Management became aware that the metal guard had been removed only after the accident which happened in front of Fabrice Deriviere, the operator, who according to him knew that the guard was missing on the machine. He did not receive any training as to how to use the machine. He was only explained how to hold the iron sheet when Fabrice pressed the pedal.

The evidence led by the Defence is as follows: -

1. Mr. Marie Sebastien Tadebois, Accused's representative in his capacity as Head of Finance and Operations, gave evidence in Court.

He was aware of the said accident involving Mr. N. Goonniah. All machines at the Accused were risks assessed regularly as per the provisions of the law. They were assessed by an outsider and who provided the company with a certificate to operate its different machines without which he would have been in violation of the law. The metal guard was removed from the guillotine machine, but Management was not aware of that fact. It was physically possible for a worker or an operator to remove the metal guard without the Management being aware or having given its authorisation. But it was not possible according to the company procedures, because pursuant to the latter, it was only the maintenance department and its guide, Mr. Ravi Sham, who had the right to remove the guard from the machine should the need arise. Should there be a problem with the machine, operation should cease and an out of order tag was to be put on the machine until the maintenance department had reassured at its satisfaction that the machine could operate anew. Had the barrier been removed on the day of the accident or a few days before, the machine ought not to have been used by the Operator. Mr. Goonniah was only a helper and not an operator and he was not supposed to operate the machine but to assist Mr. F. Deriviere in solely holding the metal sheet. He was aware as to how the machine operated and the precautions that needed to be taken. The accused company was not liable for the accident as no instructions were given to employees to work in that manner as they were all well trained. Mr. Goonniah was also given training as helper as to how to use and hold the metal sheet and he himself said in his statement that it was not the first time that he was doing that job. He again was

not agreeable that the Accused was responsible for the accident as the machine was risks assessed and a certificate was provided in order for the machine to operate so that there was no problem with the machine except that if someone had manipulated the machine for which he was not authorized. The operator was given all the training necessary as to how to operate the machine and the precautions to be taken. He was trained by his Superior who was the Factory Supervisor of the Accused's factory namely Mr. Pascal Le Coq. There was also a general training given to all employees working on the machine as regards health and safety ensured by the HR Manager. If Mr. Goonniah was injured, it was the responsibility of the two employees having worked on the machine. They ought to have refused to work on the machine without the metal guard. There would have been no danger if they had not touched the machine as there was a Risk Certificate for that machine to operate.

2. Mr. Pascal Le Coq gave evidence in Court.

At the time of the accident, he was the direct Supervisor of Mr. Fabrice Deriviere. The latter had received all the training necessary to work as Operator of the machine and Mr. Nicol Goonniah was working as helper. The latter learnt how the machine functioned from Mr. Deriviere who had explained to Mr. Goonniah as regards the precautions to be taken when he manipulated the iron sheet. The injured person was aware that no employee or operator had the right to manipulate the machine without the authorization of Management. Mr. Goonniah was taught where the dangerous parts of the machine were and where he should not place his hands. As he was not working on the material day, he was not aware how the accident happened. All machines at the Accused's factory were dangerous. Precautions needed to be taken before using those machines. As regards the specific machine involved in the present accident, the metal guard ought not to have been removed to create a danger.

3. Mr. Ravi Sham, Maintenance Supervisor, gave evidence in Court.

He was responsible for the reparation and security of the machines. If there was a problem with one machine, an out of order tag was placed on the machine which could not be utilized until it was repaired. The operators and other workers had no right to remove parts from a machine or manipulate any machine. When there was a problem with a machine, he was supposed to be made aware. He would have put an out of order tag on it and he would not have allowed anyone to work on it.

As regards the specific guillotine machine involved in the present case, there was a metal guard on the machine and there was a descending blade to cut the iron sheet. No operators, helpers or any other employee could remove the metal guard without authorization from Management. He had to be made aware first why the guard had to be removed. He was not aware at all that the metal guard was removed. He got to know about that after the accident. Had there been a problem and the guard removed, the workers could not use the machine just after. There was a procedure in place as to how to work on the guillotine machine. He was not aware who had removed the metal barrier from the guillotine machine on the material day of the accident. He at the level of the Maintenance division was supposed to see whether the machine was safe first of all. Every morning the Maintenance division checked that machine and there was the guard on it. That exercise was done only once a day which was in the morning as during the rest of the day, the machines were in operation. He was not aware who removed that metal guard which was fixed with about 20 cable ties made of plastic. He thought that they were cut and removed and that there were no screws. No one had the right to cut the cable ties. It was the first time that they were removed, as he was the one who had placed them. There were about 20 cable ties that had to be cut off for the metal barrier to be removed.

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

The evidence led by the Prosecution boils down to the fact that at the material time of the accident, the protective metal guard was not present on the cutting machine. Yet both the injured person and the operator continued to work as if the protective guard was there and which led to the unfortunate accident. The absence of such a guard could not escape the attention of both workers as it was placed along the whole length of the front of the machine as per the photographs produced (Docs.B2, B3, B4 & B5). There is no evidence to the effect that Management was aware that the protective guard was removed prior to the accident and that authorization was sought.

Now, it remained unrebutted that there was a risk certificate issued to all the machines operating at the accused company including the guillotine as they were risks assessed by outsiders. The metal protective guard was installed by Mr. Ravi Sham from the maintenance department, so that it was tied to about 20 cable ties to

the machine as there were no screw points and to be able to remove that guard, those 20 cable ties had to be cut by means of a pair of scissors. The testimony of Mr. R. Sham remained unrebutted that in the morning of the material day of the accident, the protective guard was present. During the day, there was no check by Maintenance as the machines were in operation then.

The risks of injury to the workers were identified namely to the helper, the guard was installed and it was the first time on the material day that it was removed. It remained unrebutted that the operators received training and that they should not manipulate the machine. Should there be an issue with the machine like the guard fixed to it by means of the cable ties, scratching the iron sheets while they were being cut, the workers were not allowed by the company procedures to remove the guard. But they had to stop working and inform Maintenance department. Then, Mr. Sham would have come and removed the guard if need be and to have assessed the problem. Likewise, should that guard be absent and to the knowledge of no one, neither the operator nor the helper ought to have worked but to have maintenance informed which was in line with the training they had received. In the present case, Mr. Deriviere was not called as a witness and there is no evidence adduced by the witnesses be it for the Prosecution or the Defence that Mr. Goonniah or Mr. Deriviere informed each other that the guard was removed and that they had no right to work in its absence and needed to contact Maintenance department so that an out of order tag would have been placed on that machine until the guard was replaced. But they continued to focus on their work as if the guard was present and instead of putting his right hand on the non-existent guard, the injured helper put it under the blade which led to the accident. That was against the training they had as far as health and safety were concerned.

Moreover, none of the witnesses be it on behalf of the Prosecution or the Defence confirmed the version of the enquiring officer that it was Mr. Deriviere who had removed the protective guard on the material day. In fact, none of the witnesses apart from the enquiring officer was aware who had removed that protective guard and who had based herself on the version of the injured person who did not say so in Court.

Therefore, there is unshaken evidence that the person who had removed the protective guard has remained unknown on the material day. True it is that such a protective guard could not be removed with bare hands, but in the same breath, it

could be easily removed by someone using a pair of scissors by cutting the 20 cable ties one by one. Now the photographs produced (Docs.B2, B3, B4 & B5) show that another metal guard was replaced after the accident and it was fixed again to the machine by means of some 20 cable ties which in no way detract from the fact that the guard could be removed again by someone for the reason best known to him, without the knowledge of anyone and leading to injuries to another new helper in its absence and then replaced again and fixed to the machine again by means of some 20 cable ties by the Maintenance department.

I agree with the contention of the enquiring officer that the very fact that the guard was not present at the material time of the accident and the machine having been risks assessed in that regard so that the guard had been installed prior to the accident and that the said accident occurred as a result of the absence of that guard, the system of work prevailing at that point in time was unsafe. Had about 20 padlocks linked to metal chains been used instead of plastic cable ties and the keys of the padlocks having been kept in the custody of the Maintenance Officer after those padlocks connecting the metal grid and the machine were locked, the metal guard would not have been removed unless that particular person was in possession of the individual padlock keys. That measure would have ensured solely the intervention of the Maintenance department for the removal of the metal grid should there be any issue with the machine (for instance, caused by the metal grid) and the system of work would have been rendered safe. Thus, it would have been not only physically not possible for the workers to remove the metal guard but also procedurally.

True it is that the injured person did not draw the attention of the operator (Mr. Deriviere) that the protective guard was removed or any other Superior officer and did not refuse to work in that condition. However, he was only recently employed by the Accused meaning less than a month prior to the day of the accident. Further, the primordial issue that the Court has to decide is whether the particular system of work adopted by the Accused at the material time of the accident was safe or not and not the negligence of the worker and that an absence of such kind of accidents in the past does not necessarily mean that the system of work was safe and compliant with the law (see - **The D.P.P. v Flacq United Estates Ltd** [\[2001 SCJ 301\]](#)).

Therefore, although the risks of danger meaning the accessibility to the blade was assessed by the employer and measures were taken before the accident to

have a metal grid placed along the whole length of the blade of the machine supported by 20 cable ties, however, to ensure that the metal guard remained fixed to the blade of the cutter machine so that it could be removed only by the Maintenance department in line with the training and procedures in place, it was reasonably practicable for the Accused to have used padlocks linked to metal chains instead of plastic cable ties. Thus, it was reasonably practicable for the Accused to do more than it had already done to prevent the accident from occurring.

For all the reasons given above, I find that the case for the Prosecution has been proved beyond reasonable doubt. I, accordingly, find the Accused guilty as charged.

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

19.8.2025