

OSHI v Rogers Hospitality Operations Ltd

2025 IND 49

Cause Number 102/23

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

In the matter of:

OSHI

v.

Rogers Hospitality Operations 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 2005 – Act No.28 of 2005 coupled with section 44(2) of the Interpretation and General Clauses Act with unlawfully failing on or about the twentieth day of December 2021 to ensure so far as is reasonably practicable, the safety and health at work of one of its employees namely one Vimal Gangaram who sustained amputation of the 4th and 5th fingers and near amputation of 3rd finger of his left hand whilst he was operating a circular sawing machine of make Metabo and model TKHS 315 C in the Maintenance Workshop of Veranda Paul & Virginie Hotel situated at Royal Road, Grand Gaube.

The Accused's representative has pleaded not guilty and has retained the services of Counsel at his trial.

The case for the Prosecution rested on the evidence led by Mr. L. Bhuruth in his capacity as Principal Occupational Safety and Health Officer and Mr. Vimal Gangaram who is the injured person.

Mr. L. Bhuruth in his capacity as Principal Occupational Safety and Health Officer enquired into an accident at work which occurred on 20.12.2021 at the maintenance workshop of Accused [namely Veranda Paul & Virginie Hotel now known as Rogers Hospitality Operations Ltd] situated at Grand Gaube where its worker namely Mr. V. Gangaram sustained injuries at his left hand's fingers.

1. His conclusions and observations were based on what the injured person had revealed to him.

- 1.1 But he did not record a statement from the other two persons present at the time of accident mentioned by the injured person, which could have enlightened him as regards the state of the machine *in lite* and the circumstances of the accident.
- 1.2 That was because he was told by the injured person that one of them was not facing him at that time.
- 1.3 He admitted that he went to the locus of the accident about three weeks after the accident occurred and only recorded a statement from the injured person and the representative of the Accused which were well after those three weeks.
- 1.4 He further admitted that he could not say about the state of that machine before and on the day of the accident so that the photographs (Docs. B1 -B6) taken about three weeks after the accident showing the shortcomings found in that machine were based on what the injured person had told him and not what the Accused's representative had told him. Indeed, he did not say in Court that on the day of his inspection of that circular sawing machine, that machine was being put to the use of the workers.
- 1.5 Mr. V. Gangaram (the injured person) was working with that machine on the material day and at the material place as he was performing wood work activity, when suddenly his left hand came into contact with the running blade of that machine and he sustained injuries.
- 1.6 Thus, his investigation report (Doc. H) leading to his concluding one (Doc. J) revealed that-

- (i) a riving knife and an adjustable top guard: guarding the part of the saw blade which was above that machine table, were not provided to that machine during its operation at the time of accident;
- (ii) the top guard which was provided to the part of the saw blade which was above that machine table, was not securely fixed and could easily be removed and therefore, did not provide adequate protection to the operator against accidental contact with the saw blade during the operation of that machine;
- (iii) Moreover, no riving knife was provided on which the top guard should be installed;
- (iv) Mr. V. Gangaram did not receive any training for using such a machine and the precautions to be taken then.

Mr. V. Gangaram stated in Court that he in a team was instructed by his Head to do Christmas and New Year decorations and he chose to cut wood on 20.12.2021.

There was a circular sawing machine make Metabo and he chose to operate on it among other machines found in the maintenance workshop of Accused. At no time, he said that he was not trained to do that job on that machine or was inexperienced in any manner whatsoever.

He had been working for the Maintenance department of the Accused for thirteen years and was still working there. He was having a wooden plank cut by feeding it to the saw blade of that circular sawing machine at the material time, when the wooden plank got caught between the guidance space and the blade and that plank was stuck in the middle and could not move.

- (a) He admitted that he was supposed to switch off the machine in such a situation and the switch off button was easily accessible in the machine itself.
- (b) But he used his left hand to apply force to the blocked wooden plank by means of another piece of wood and in the meantime was in the process of switching off the machine with his right hand as he was right-handed. He did not press the switch off button yet, when the blade restarted operation very fast and pulled the wooden plank together with his left hand causing his said

left hand to come into contact with the saw blade of the machine and he sustained the unfortunate injuries as per the information as a result.

- (c) Then, he decided that there was no cover on the blade of the machine at the material time and that it was at all times like that, which is diametrically opposed as to what the enquiring officer had said by relying on his version of facts only, that there was a cover or top guard which was provided to the part of the saw blade which was above the machine table.
- (d) He went on to say that the accident could have been avoided according to him and he candidly admitted that, if he continued to apply feeding pressure to the blocked wooden plank meaning while the blade stopped moving, the wooden plank could have been thrown back against him causing him injury.

No evidence was led by the Defence.

The Accused's representative has denied liability in his unsworn statement (Doc. G) recorded by Mr. L. Bhuruth in that all safety measures in relation to that machine as per the machine operational manual (Doc. F) were complied with at the material time and at the material place.

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

The only enquiring officer (Mr. L. Bhuruth) who relied solely on the version of the injured person as regards the state of the machine at the time of the accident, together with the photographs taken about three weeks after the accident, candidly admitted that the photographs did not reflect the state of the machine at the material time of the accident let alone that the injured person contradicted that officer in that he said in Court that there was no cover or top guard provided for the machine at the material time of the accident and at all times.

Now there has been no expert evidence emanating from a Mechanical Engineer to support the fact that the machine was unsafe for use in the state it was at the time of accident, the safety procedures that ought to have been followed and shortcomings if any and the adequacy or inadequacy of the safety measures

contained in the machine operational manual (Doc. F) for that machine at the material time.

Furthermore, no evidence has emanated from the injured person that he did not receive any training for the job he did, as opposed to what the enquiring officer had said by relying on the version of that same injured person, which lends support to the unsworn version of the Accused that all safety measures as per the machine operational manual (Doc. F) were complied with at the material time of accident and for which it was not liable.

Indeed, the testimony of Mr. V. Gangaram remained unrebutted to the effect that he had mastered the safety steps namely when a wooden plank was blocked or stuck in the manner it did at the material time, were to switch off the machine by pressing the switch off button found in that machine itself and not to venture to apply pressure to that stuck wooden plank, while the blade discontinued to move, as that wooden plank could rebound on him causing him injury.

However, he chose to do the contrary, as he continued to apply pressure to that blocked wooden plank, while the machine was not switched off yet, which no wonder led to the accident entailing injuries being caused to him.

Thus, the unescapable conclusion is that the injured person has glaringly flouted a safe system of work put into place by Accused, as he had failed to switch off the machine in the first place.

Therefore, the contention that- (i) given the absence of a riving knife and an adjustable top guard (namely a blade guard) guarding the part of the saw blade, which was above the circular sawing machine table, during the machine operation [bearing in mind that both items form part of the safety measures as per the machine operational manual (Doc. F) which were claimed to have been complied with by Accused at the material time of accident in his unsworn version and their uses and modes of operation are highlighted in that manual itself] and (ii) that the injured person did not receive any training to work on that machine (as opposed to his training record as regards the methodology to be adopted in the maintenance department as per Doc. C) , were the cause of the accident, cannot be relied upon.

Hence, it cannot be conclusively construed that Mr. V. Gangaram was injured following an accident as a result of an unsafe system of work bearing in mind that the circumstances of the accident were based solely on his version to support what the enquiry had revealed.

Therefore, the Prosecution having failed to establish beyond reasonable doubt that the accident occurred as a result of an unsafe system of work of Accused, there is no justification for any burden to be laid at the door of the Accused in the circumstances under section 96(6) of the Occupational Safety and Health Act 2005.

For the reasons given above, being dutybound, I dismiss the information against the Accused.

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

8.7.2025