

OSHI v The Municipal City Council of Port Louis

2025 IND 24

THE INDUSTRIAL COURT OF MAURITIUS

(Criminal Side)

In the matter of:-

CN 64/2023

OSHI

v.

The Municipal City Council of Port Louis

SENTENCE

1. Further to its guilty plea, the Accused has been convicted for having failed to ensure, so far as is reasonably practicable, the safety, health and welfare at work of one of its employees, in breach of section 5(1), coupled with section 94(1)(i)(vi), of the Occupational Safety and Health Act 2005 (OSHA).

2. It came out in evidence in the course of the hearing that on 23 August 2021, an accident at work occurred at the Central Market, Port Louis whereby one Omduth Jaguessar, who was employed as handy worker, sustained chemical injury at his right eye. The enquiry led by the Occupational Safety and Health Division of the Ministry of Labour, Human Resource Development and Training revealed that, at the material time, Mr. Jaguessar was handling a bag of caustic soda when the bag broke causing caustic soda to enter his right eye. He was conveyed to hospital where he was admitted for treatment. The investigation showed that the employee had been provided with protective equipment such as rubber boots and gloves, woollen gloves, raincoat and reflective jacket. However, he had not been provided with eye shields.

Moreover, he had not received the appropriate information on the safe use, handling, storage and transport of caustic soda.

3. It was confirmed in Court that Mr. Jaguessar used a plastic bag to carry the caustic soda instead of a raffia bag. The Accused's representative asserted in Court that the injured employee had his share of responsibility in the incident. He stated that Mr. Jaguessar has recovered and resumed work. He added that eye shields are now provided to employees. He apologised on behalf of the Accused.

4. Learned Counsel appearing for the Accused highlighted the mitigating factors in this case and invited the Court to impose a minimal fine.

5. In **General Construction Company Limited v. Occupation, Safety and Health Inspectorate, Ministry of Labour, Industrial Relations and Employment (2020) SCJ 40**, the Supreme Court highlighted that *"the legislator's intent behind OSHA is to ensure the safety of workers and OSHA therefore sets out the responsibilities of the employer in that regard."*

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. By virtue of section 94(1)(i)(vi) of the OSHA, any person who contravenes a provision of the Act shall commit an offence. As employer, the Accused has rendered itself liable *"to a fine not exceeding 75,000 rupees and to imprisonment for a term not exceeding one year"*, pursuant to section 94(3)(b) of the OSHA.

8. 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.

9. Learned Counsel for the Accused referred to the case of **Lin Ho Wah v. The State (2012) SCJ 70** where the Supreme Court held:

“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.”

10. I have considered all the facts and circumstances of this case as borne out on record. There is a timely guilty plea. I find that this accident at work could have been avoided had eye shields been provided to the worker. There is unchallenged evidence, however, that the needful has now been done. It is also uncontested that Mr. Jaguessar has now fully recovered. I note that the Accused in borne on record, but not for cognate offences.

11. Bearing in mind all the above considerations, I sentence the Accused to pay a fine of Rs 6,000. The Accused shall also pay Rs 200. as costs.

02 April 2025

M. ARMOOGUM

Magistrate