

OSHI v The United Basalt Products Limited

2024 IND 42

THE INDUSTRIAL COURT OF MAURITIUS
(Criminal Side)

In the matter of:-

CN 33/2023

OSHI

v.

The United Basalt Products Limited

SENTENCE

1. The Accused company pleaded guilty to the offence of failing to notify an accident by the quickest practicable means, in breach of sections 85(1)(a) and 94(1)(i)(vi) of the Occupational Safety and Health Act 2005 (OSHA). The Accused now stands convicted as charged.

2. A hearing was held into the circumstances of the case and it revealed that a work accident involving one Hrithik Raj Imrit – employed by the Accused as apprentice – occurred at the Accused company's premises at Geoffroy Branch Road, Bambous on 13 November 2021. Mr. Imrit was caught in between the forks of a forklift and sustained injuries at his left knee, left fibula, right thigh and ankle. He was conveyed to a private hospital on the same day where he was admitted. He was discharged 2 days afterwards and was advised two weeks' rest. It is the Accused's version that a report of the accident was sent by post to the Ministry on Monday 15 November 2021, but according to Ms Rosunee, Occupational Safety and Health Officer who deposed for the prosecution, the notification was received one week afterwards.

3. Mr. Judex Thomas, Health and Safety Officer who represented the Accused in Court, apologised on its behalf and stated that the Accused company has a safe system of work in place.

4. The Accused is borne on record for one non-cognate offence.

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 stressed 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.*" In that connection, administrative offences like the present one have been created.

6. Pursuant to section 85(1)(a) of the OSHA, "*where any employee, as a result of an accident arising out of or in connection with his work, dies or suffers any of the injuries or conditions specified in the Eleventh Schedule ... the employer shall forthwith notify the Director, Occupational Safety and Health by the quickest practicable means.*" Under that provision, the fact that the injury sustained by Mr. Imrit at his workplace necessitated his admission to hospital for more than 24 hours, immediate notification was required on the part of the Accused. Having failed to do so, the Accused has rendered itself liable "*to a fine not exceeding 75,000 rupees and to imprisonment for a term not exceeding one year*" – vide section 94(3)(b) of the OSHA.

7. 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 highlighted the need to apply the principle of proportionality to reach the appropriate sentence in any given case.

8. 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."

9. Having borne the above considerations in mind, including the timely guilty plea and the Accused's apologies, I sentence the Accused to pay a fine of Rs 3,000., together with Rs 200. as costs.

12 September 2024

M. ARMOOGUM

Magistrate