OSHI v Island Fresh Ltd

2025 IND 50

Cause Number 73/2023

In the Industrial Court of Mauritius
(Criminal side)

In the matter of:

OSHI

v.

Island Fresh 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 – Act No.28 of 2005 coupled with Section 44(2) of the Interpretation and General Clauses Act with unlawfully failing on or about the 3rd day of May 2022 to ensure so far as is reasonably practicable, the safety, health and welfare of all its employees at work when one Steven Poorun as a result of which, he sustained a fracture injury to his left hand, when he tripped against a fixed metal bolt on the edge of a concrete slab and fell at its place of work in the washing area of the factory situated at Mon Loisir.

The Accused's representative, Mr. Arvind Sooknauth, in his capacity as Health and Safety Officer pleaded not guilty and was assisted by Counsel.

The case for the Prosecution rested on the evidence given in Court by –

(i) Mr. Nilesh Kumar Ramburn in his capacity as Health and Safety Officer,
(ii) Mr. Steven Poorun (the injured Farm worker) and
(iii) Mr. Sanjay Dalliah (another Farm worker).

The case for the Defence rested on the evidence given in Court by Mr. Arvind Sooknauth in his capacity as Health and Safety Officer.

I have duly considered all the evidence put forward before me in the course of the trial and the submissions of learned Counsel for the Defence.

This whole case revolves around the undisputed, uncontested and unrebutted evidence adduced by both the Prosecution and the Defence which boils down to the following: -

1. Mr. Steven Poorun, Farm worker, employed by the Accused had for duty on the 3.5.2022 *inter alia* to wash the feed dishes for poultry pens.

2. There were two concrete slabs having protruding metal bolts fixed to their corners, within the reach of the washing area of Accused's factory.

3. But the two concrete slabs were used by the Farm workers as a temporary washing area during rainy weather when there was water accumulation and when the sun was strong. But they were not designated as a place of work for such an activity by the Accused, inasmuch as the designated washing area was on the soil.

4. An accident happened on one of the concrete slabs on 3.5.2022 which was a rainy day.

5. After the washing of the poultry dishes was over, Mr. S. Poorun who was wearing his protective boots at that time, forgot to collect his gloves.

6. After having collected his said gloves from the washing area, while he was returning to poultry pen number 5, his left foot tripped against the fixed protruding metal bolt on one of the concrete slabs, as he forgot about the

presence of that bolt. He lost balance and fell down so that he sustained injuries to his left hand which was fractured as a result.

It is the contention of the Prosecution that a safe system of work was not provided for by the Accused and that the protruding fixed metal bolts on the two concrete slabs have been sawn off by the Accused only after the accident in order to prevent a recurrence.

However, the contention of the Defence is that the place where the accident happened was not a designated place of work by the Accused for the washing of poultry dishes. Had the washing of those dishes on the concrete slabs with fixed protruding metal bolts been unsafe, there would have been many workers injured and not just Mr. Poorun. The accident happened after the washing was completed when Mr. Poorun went to collect his gloves there in order to move to another area, that he carelessly tripped against one fixed protruding metal bolt found on one of the concrete slabs. The accused company is not liable.

Now, the accused company admitted that the two concrete slabs containing those protruding fixed metal bolts were also used by the employees as a temporary washing area for the washing of the feeding dishes of the poultry, in order to protect them from the strong sun as per its statement (*vide* - Doc. D). Further, it is not disputed that those concrete slabs were also used during rainy weather by the Farm workers to protect them from working on accumulated water on the soil which is their designated place of work.

Therefore, the designated place of work did not protect the workers from slipping in the muddy soil on a rainy day nor from losing balance leading to a fall because of the strong sun on a sunny day. Such protection was only afforded to the Farm workers, by they themselves using the two concrete slabs as a temporary washing area to the knowledge of the Accused. Such a state of affairs cannot be construed as a safe system of work put into place by the Accused, as the risk of injury was highly foreseeable.

Although no Farm worker was injured before by using the two concrete slabs, nor by having slipped on the wet or muddy soil on a rainy day and nor by having lost balance and fallen as a result of a feeling of dizziness or weakness caused by the

strong sun on a hot sunny day, while working on that designated soil, does not mean that the system of work was safe.

That is why the primordial duty of the Court is to ascertain whether the system of work adopted by the Accused was a safe one and not the negligence of the employee. The case of **The DPP v Flacq United Estates Ltd [2001 SCJ 301] is directly in point** where the Supreme Court had this to say in relation to a breach of section 5(1) of the Occupational Safety, Health & Welfare Act 1998 (whose provisions have been consolidated in section 5(1) of the Occupational Safety and Health Act 2005 hereinafter referred to as *"OSHA"*):

"(…) Section 5 of the Act indeed provides for the duties and responsibilities of an employer towards his employees. One of the primordial duties expressly set down in the law is that of ensuring the safety, health and welfare at work of the employees.

The primordial issue which the learned Magistrate had to decide was whether the particular system of work adopted by the respondent (…) was safe. The issue was not whether the death of Labiche had been caused by the respondent's negligence or imprudence or whether Labiche had himself been imprudent when he entered the ashtray through the small door. Also, it is not because no serious accident had occurred in the past that a system of work is necessarily compliant with the requirements of the Act." (**emphasis added**)

In the same breath, it is relevant to note that in **General Construction Company Limited v Occupation, Safety and Health Inspectorate, Ministry of Labour, Industrial Relations and Employment [2020 SCJ 40]** at page 5, the Supreme Court has buttressed the following:

*"The burden imposed on employers by section 5(1) of the OSHA is **not** discharged by simply listing the precautions and communicating these to workers. The duty does not end here as the employer has to ensure the safety, health and welfare of its employees. (…)*

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."

Now, true it is that the designated place of work was on the soil and that the accident occurred after the washing was completed and that the injured person was

somewhat negligent and forgot that there were protruding fixed metal bolts on the concrete slabs, when he tripped over one of them and fell down. Such an occurrence in no way wards off the possibility of such an accident to have happened, while the washing process was not over, so that he could have negligently forgotten about the presence of the bolts on those slabs by standing on one of them, while focusing on his work and then would have tripped on one of the bolts and would have sustained injuries.

Indeed, to cater for such kind of difficulty, in **Babooram J. v Ministry of Labour** [2013 SCJ 6] at page 2, the Supreme Court has amply illustrated and stressed on the ambit of a place of work as follows:

"

[8] *In law, the liability of an employer to his employee is not demarcated physically by the area of the ground, floor or surface area where the employee is made to work but by the concept of "at work". The duty is not related to the work-place as such but to the work.*

[9] *Section 5(1) of the Occupational Safety, Health and Welfare Act (Act No. 34 of 1988) reads as follows:*

"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." (underlining ours)

[10] *The meaning of "at work" is larger than on site. It includes the provision of a working environment that is safe and without risks to health. It is no defence to state that "My working place is safe. If there are noxious fumes coming from the neighbour that is not my problem." Nor is it a defence to state that "My workplace is safe. If the worker falls into a ditch dug just outside my gate, that is the worker's problem." In this sense, "at work" is a concept not a physical location. The responsibility for safety and health resting on the employer extends to means of access to and egress" from the workplace.*

[11] *Even if the employee had strayed away for a short distance to have her meal, the liability of the employer did not end with the field area but with the concept of whether she was still at work, which includes the provision of information and instruction as well as providing safe conduct from and to the place of work:*
Section 5(2)(e), in this regard, provides:

"(2) Without prejudice to the generality of an employer's duty under subsection (1), the matters to which that duty extends shall include in particular-

(d) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as 'is reasonably practicable, the safety and health at work of his employees;

(e) the maintenance of any place of work under the employer's control, including the means of access to and egress from it, in a condition that is safe and without risks to health, so far as is reasonably practicable."

(underlining ours)

[12] *In the case of the appellant, the employer had never given any information, nor any instruction, nor supervised, nor maintained safe means of access to and egress from the place of work.*

[13] *The working environment was anything but safe in the circumstances. An employer's duties under the Act should be noted:*

"(2) Without prejudice to the generality of an employer's duty under subsection (1), the matters to which that duty extends shall include in particular-

(a) the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work;"".

Hence, the accused party in order to be absolved from liability cannot rely on the negligence or carelessness of the injured person nor on the fact that the particular work namely the washing of the feeding dishes was over when the accident happened on a non-designated place of work, as the safety and welfare of the worker extends to the work and not the place so that there was still work left apart from the washing on the material day. That is why the place of work includes the access to and egress from the place of work (see – **Babooram**(supra).

Therefore, I find that the Prosecution has established its case beyond reasonable doubt that the system of work adopted by the Accused on the material day of the accident was unsafe.

At this stage, I find it relevant to reproduce both sections 5(1) and 96(6) of the OSHA below:

> *"**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.*
>
> ***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."(**emphasis added)***

For all the reasons given above, I take the view that the Accused has failed to discharge the burden placed upon it under section 96(6) of the OSHA on a balance of probabilities that it was not reasonably practicable for it –

> "(…) *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, (…)."*

This is because the Accused was fully aware that standing on the slabs proved to be more convenient to the workers for the washing of poultry dishes, as obviously the water getting on the soil which was the designated washing area of the factory, that is, its place of work, would get muddy and slippery bearing in mind that the material day of the accident was a rainy one. In the same breath, it is relevant to note that the safety and welfare of the worker extends to the work and not to the place which explains why the place of work includes the access to and egress from

the place of work meaning that it includes the provision of a working environment that is safe and without risks to health. (see – **Babooram**(supra)). Therefore, the Accused ought to have sawn off the fixed metal bolts found on the two concrete slabs which were within the reach of the washing area, for the safety of those Farm workers like Mr. Poorun and which was a measure that was reasonably practicable for it to have taken well before the accident and not after.

Indeed, in the Supreme Court case of **Jeanneton v Cie Sucrière de Bel Ombre** [1993 SCJ 455], the scope of the term reasonably practicable was highlighted and which reads as follows:

"The test of what would be reasonably practicable was considered in Edwards v National Coal Board (1949) 1 K.B. 704,712 where Asquith L.J. had this to say:

*'Reasonably practicable' is a narrower term than 'physically possible' and seems to me to imply that a computation must be made by the owner, in which the quantum of risk is placed on one scale and the sacrifice involved in the measures necessary for averting the risk(whether in money, time or trouble) is placed in the other; and that if it be shown that there is a gross disproportion between them – the risk being insignificant in relation to the sacrifice the defendants discharge the onus on them. " (**emphasis added)***

(see also Marshall v Gotham Co Ltd (1954) A.C. 360 and Jenkins v Allied Ironfounders Ltd (1970) 1 W.L.R. 304)."

Thus, I hold that the risk (of injury to the Farm workers) which is to be averted by the accused employer, is not insignificant in relation to the sacrifice involved in taking the measures necessary for averting the risk (whether in money, time or trouble). Hence, I hold that the burden placed upon the Accused has not been discharged on a balance of probabilities (see - **Talbot Fishing Co Ltd v Ministry of Labour & Industrial Relations (Occupational Safety and Health Inspectorate)** [2005 SCJ 76]).

Therefore, I find the Accused guilty as charged.

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

11.7.2025