

OSHI VS AGRIA LTD

2024 IND 33

MINISTRY OF LABOUR, HUMAN RESOURCE DEVELOPMENT AND TRAINING (OSHI) VS AGRIA LTD

Cause Number: 132/23

THE INDUSTRIAL COURT OF MAURITIUS

(Criminal Division)

In the matter of:-

**MINISTRY OF LABOUR, HUMAN RESOORCE DEVELOPMENT AND
TRAINING**

VS

AGRIA LTD

JUDGMENT

Introduction

The Accused stands charged with an offence of failing to forthwith notify the Director, Occupational Safety and Health of an accident arising out of or in connection with work by the quickest practicable means in breach of section 85(1)(a) and sections 94(1)(i)(vi) and 94(3)(b) of the Occupational Safety and Health Act – Act No. 28 of 2005 coupled with section 44(2) of the Interpretation and General Clauses Act.

The Accused, as duly represented by its director, pleaded not guilty to the charge against him and was assisted by Counsel.

The facts

On the 12th December 2022, an accident occurred at the place of work of the Accused company whereby an employee sustained fracture of her right 5th and 6th ribs when a coconut fell on her back while she was cleaning under a coconut tree. She was conveyed to Souillac hospital in the company vehicle and from there to Jawaharlal hospital on the same day where she was admitted. She was discharged on the 22nd December 2022 and was advised one month rest followed by additional leaves. She resumed duty on the 20th February 2023.

Mrs Rosunee, an occupational safety and health officer enquired into the present case and duly drew up a report which she produced in Court. She further recorded a statement from a representative of the Accused wherein the latter denied the charged against the Accused company. According to Mrs Rosunee, the Accused should have notified the Director, Occupational Health and Safety on the 13th December 2022, according to section 85(1)(a) of the Occupational Safety and Health Act.

The version of the Accused is contained in a statement given by a representative of the Accused, Mr Sam Soon Joseph Antoine Yan Long, to Mrs Rosunee and through the testimony of Mr Dooshyant Kistomohun, the representative of the Accused company, in Court. The Accused, as represented by Mr Kistomohun in Court, gave a timeline in relation to the reporting of the accident which occurred on the 12th December 2022. He explained that he was informed of the accident on the 13th December 2022 through the landscaping manager. He called the health and safety officer, Mr Sam Soon Joseph Antoine Yan Long, on the 14th December 2022 but to no avail. The latter called him back on the 15th December 2022 and there and then, he informed the health and safety officer, Mr Sam Soon Joseph Antoine Yan Long of the accident. They tried to call the Ministry of Labour, Human Resource Development and Training through the hotline but no one picked up the phone. They finally had to call an officer of the Ministry directly to notify him of the accident and the Accused provided all necessary papers. On the next day, the Accused was convened for a statement.

Observations

I have assessed the evidence on record. The Accused stands charged with the offence of failing to forthwith notify the Director, Occupational Safety and Health of an accident arising out of or in connection with work by the quickest practicable means. Section 85(1)(a) of the Occupational, Safety and Health Act reads:

“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, or where there happens a dangerous occurrence specified in the Twelfth Schedule, the employer shall –(a) forthwith notify the Director, Occupational Safety and Health by the quickest practicable means”;

It is to be noted that section 85(1)(a) of the OCCUPATIONAL SAFETY AND HEALTH ACT makes mention of the eleventh and twelfth schedule of the Act. The eleventh schedule of the Occupational, Safety and Health Act lists the injuries which require immediate notification

to the Director, Occupational Safety and Health and the twelfth schedule lists the dangerous occurrences warranting notification. They are as follows:

ELEVENTH SCHEDULE

(section 85)

LIST OF INJURIES REQUIRING IMMEDIATE NOTIFICATION

1. *Fracture of the skull, spine or pelvis, sternum, one or more ribs, or scapula*
 2. *Fracture of any bone–*
 - (i) *in the arm or wrist, or in the hand; or*
 - (ii) *in the leg or ankle, or foot.*
 3. *Amputation of–*
 - (i) *a hand or foot; or*
 - (ii) *a finger, thumb or toe, or any part thereof if the joint or bone is completely severed.*
 4. *The loss of sight of an eye, a penetrating injury to an eye, or a chemical or hot metal burn to an eye.*
 5. *Either injury (including burns) requiring immediate medical treatment, or loss of consciousness, resulting in either case from an electric shock from any electrical circuit or equipment, whether or not due to direct contact.*
 6. *Loss of consciousness resulting from lack of oxygen.*
 7. *Decompression sickness.*
 8. *Either acute illness requiring medical treatment, or loss of consciousness, resulting in either case from the absorption of any substance by inhalation, ingestion or through the skin.*
 9. *Acute illness requiring medical treatment where there is reason to believe that this resulted from exposure to a pathogen or infected material.*
 10. *Any other injury which results in the person injured being admitted into hospital for more than 24 hours.*
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TWELFTH SCHEDULE

(sections 6 and 85)

LIST OF DANGEROUS OCCURRENCES

1. *The collapse of, the overturning of, or the failure of any load bearing part of–*
 - (a) *any lift, hoist, crane, derrick or mobile powered access platform, but not any winch, teagle, pulley block, gin wheel, transporter or runway;*
 - (b) *any excavator; or*
 - (c) *any pile driving frame or rig having an overall height, when operating, of more than 7 metres.*
2. *Explosion, collapse or bursting of any closed vessel, including a boiler or boiler tube, in which the internal pressure was above or below atmospheric pressure, which might have been liable to cause the death of, or injury to any person, or which resulted in the stoppage of the plant involved for more than 24 hours.*
3. *Electrical short circuit or overload attended by fire or explosion which resulted in the stoppage of the plant involved for more than 24 hours and which, taking into account the circumstances of the occurrence, might have been liable to cause the death of, or injury to any person.*
4. *An explosion or fire occurring in any plant or place which resulted in the stoppage of that plant or suspension of normal work in that place for more than 24 hours, where such explosion or fire was due to the ignition of process materials, their by-products (including waste) or finished products.*
5. *The sudden, uncontrolled release of 500 kilogrammes or more of highly flammable liquid, flammable gas or flammable liquid above its boiling point from any system or plant or pipe-line.*
6. *A collapse or partial collapse of any scaffold which is more than 5 metres high which results in a substantial part of the scaffold falling or overturning; and where the scaffold is slung or suspended, a collapse or part collapse of the suspension arrangements (including any outrigger) which causes a working platform or cradle to fall more than 5 metres.*
7. *Any unintended collapse or partial collapse of–*
 - (a) *any building or structure under construction, reconstruction, alteration or demolition, or of any false-work, involving a fall of more than 5 tonnes of materials; or*
 - (b) *any floor or wall of any building being used as a place of work, not being a building under construction, reconstruction, alteration or demolition.*
8. *Either of the following incidents in relation to a pipeline–*
 - (a) *the bursting, explosion or collapse of a pipe-line or any part thereof; or*

(b) the unintentional ignition of anything in a pipe-line, or of anything which immediately before it was ignited was in a pipe-line.

9. *Any incident in which plant or equipment either comes into contact with an uninsulated overhead electric line in which the voltage exceeds 200 volts, or causes an electrical discharge from such an electric line by coming into close proximity to it, unless in either case the incident was intentional.*

For the purposes of the present case, we are concerned with the eleventh schedule of the OCCUPATIONAL SAFETY AND HEALTH ACT as the case concerns an admission into hospital for more than 24 hours necessitating a notification forthwith to the Director, Occupational Safety and Health by the quickest practicable means, as listed down in the eleventh schedule of the OCCUPATIONAL SAFETY AND HEALTH ACT.

I have perused section 85(1)(a) of the OCCUPATIONAL SAFETY AND HEALTH ACT as well as the eleventh and twelfth schedule thereof, with utmost care and I find that although the Act envisages an immediate notification to the Director, Occupational Safety and Health, there is no specific time frame mentioned. The only reference to timing in the eleventh schedule of the Act is contained in section 10 of the eleventh schedule which refers to an injury which results in the person injured being admitted into hospital for more than 24 hours. This means that if an employee has been injured necessitating admission in hospital for more than 24 hours, the employer would need to notify forthwith the Director, Occupational Safety and Health, by the quickest practicable means, after the 24 hours have lapsed.

In the present case, Mrs Rosunee, the Occupational Safety and Health Officer, called as a Prosecution witness, testified that the Accused should have notified the Director, Occupational Safety and Health on the 13th December 2022, that is, 24 hours after the injured person has been admitted. True it is that the countdown for notification will start as from 24 hours after the admission but as from this point, the notification will have to be forthwith by the quickest practicable means.

We have to bear in mind that the notion of 'forthwith' in section 85(1)(a) of the Occupational, Safety and Health Act does not stand alone. It must be coupled with the notion of the quickest practicable means, that is based on a notion of reasonableness and practicability. Indeed, section 85(1)(a) of the Act talks about the quickest practicable means and does not impose a specific time frame to limit the maximum number of days within which the Accused has to notify the Ministry.

I am of the view that section 85(1) must be read holistically and as a whole to understand the spirit of the Act. Section 85(1)(b) lays down that 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, or where there happens a dangerous occurrence specified in the Twelfth Schedule, the employer shall within 7 days send a report thereof to the Director, Occupational, Safety and Health in the form set out in the thirteenth schedule. I find that it stands to reason that if the legislation has imposed a time frame of 7 days for a report to be sent by an employer, any delay of less than 7 days for notification, would in essence, be reasonable.

Having said that, given that there is no specific time frame for the Accused to inform the Ministry, the conduct of the Accused as well as the circumstances of the case must be taken into account to determine whether the Accused acted by the quickest practicable means.

In the present case, the Accused has explained that the accident occurred in the afternoon of the 12th December 2022. The operations manager was informed about the accident on the next day, that is the 13th December 2022. He tried to call the health and safety officer on the 14th December 2022 but could only manage to talk to the latter on the 15th December 2022, day on which the Director, Occupational Safety and Health was notified, albeit after much effort as the Ministry did not respond to the hotline.

The countdown for notification started on the 13th December 2022 and the notification took place on the 15th December 2022 by phone. I do not find the delay of 2 days bearing in mind the conduct of the Accused to constitute a delay creating an offence. I open a parenthesis here to state that in the event of an accident affecting the safety and health of an employee, reasonableness would vary depending on the circumstances of each case, with priority to be given to injured employees warranting medical intervention. It is to be remembered that the spirit and essence of the OCCUPATIONAL SAFETY AND HEALTH ACT as reflected in the case of **GENERAL CONSTRUCTION COMPANY LIMITED v OCCUPATION, SAFETY AND HEALTH INSPECTORATE, MINISTRY OF LABOUR, INDUSTRIAL RELATIONS AND EMPLOYMENT (2020) SCJ 40** is 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 view of the above and without in any way undermining the importance of forthwith notification, one must bear in mind the concept of reasonableness and practicability when faced with an emergency necessitating medical intervention for the health and safety of an employee.

In the present case, when viewed holistically, I find that the Accused tried by the quickest practicable means to inform the Ministry within a reasonable delay, being 2 days in

the present case. I do not find anything sinister in the conduct of the Accused which would warrant an offence as the notification was reasonably expeditious, subject to the notion of the practicable means at the time.

Conclusion

In view of the above, I find that the Prosecution has failed to its case against the Accused beyond reasonable doubt. I dismiss the case against the Accused.

Judgment delivered by: M.GAYAN-JAULIMSING, Ag President, Industrial Court

Judgment delivered on: 16th August 2024