

OSHI v Beijing Construction Engineering Group Co Ltd

2024 IND 25

THE INDUSTRIAL COURT OF MAURITIUS

(Criminal Side)

In the matter of:-

CN 86/2023

OSHI

v.

Beijing Construction Engineering Group Co Ltd

SENTENCE

1. Further to its guilty plea, the Accused company has been convicted for having failed to ensure, so far as is reasonably practicable, the safety, health and welfare at work of all 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 03 July 2022, an accident at work occurred at Tribeca Smart City Construction Site whereby one Budhathoki Dhan Bahadur, who was in the Accused's employment as carpenter, suffered injury at his eye. At the relevant time, Mr. Bahadur was hitting a nail with a hammer when the nail bounced off and hit his right eye. He was immediately conveyed to hospital where he received treatment. Medical examination later showed that he had a right scleral laceration which necessitated admission **(Document A)**.

3. The prosecution adduced evidence that enquiry into this accident at work led by the Occupational Safety and Health Division of the Ministry of Labour revealed that,

at all material times, the workers were not provided with safety goggles. Such protective equipment is considered imperative as carpenters are constantly exposed to wood dust, wood pieces and other items which can easily get into their eyes.

4. The Accused company has admitted the breach of the law both in its out-of-court statement and in Court, and apologised. The Accused's representative added that although Mr. Bahadur had not been provided with safety goggles, other protective equipment such as a safety helmet, a fluorescent vest and safety shoes were given to him.

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 – *vide* also **Lin Ho Wah v. The State (2012) SCJ 70**.

9. I have considered all the facts and circumstances of this case as borne out on record. I find that this accident at work could have been avoided had Mr. Bahadur been provided with safety goggles. The latter was admitted in hospital for 4 days and was unfit for work for a month, having suffered serious injury at his right eye. I note, however, that the Accused has a clean record and has pleaded guilty at the first reasonable opportunity. The Accused has also been apologetic about the incident both at enquiry level and in Court. These are strong mitigating elements.

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

27 June 2024

M. ARMOOGUM

Magistrate