

OSHI v Safari Adventures Co Ltd

2024 IND 14

THE INDUSTRIAL COURT OF MAURITIUS
(Criminal Side)

In the matter of:-

CN 111/2023

OSHI

v.

Safari Adventures Co Ltd

SENTENCE

1. The Accused company stands convicted for 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).

2. The Accused pleaded guilty to the charge. The facts and circumstances of the case as revealed at the hearing are that on 23 June 2022 an accident at work occurred at the Defendant's camel park at Casela World of Adventure, Cascavelle whereby one Loic Davidson Douglas Obtesie was injured. The latter, who was employed as Animal Keeper by the Defendant, accidentally stepped on a muddy surface and fell. He sustained injury at his right ankle and was conveyed to hospital for treatment. It was found that he had a lateral malleolus fracture and he was granted 2 weeks' medical leave. The Director, Occupational Safety and Health was notified of the accident only on 28 June 2022 and a report of accident was submitted by the employer on the same day.

3. In its out-of-court statement, the Defendant, through its General Manager, admitted having been informed of Mr. Obtesie's accident on 23 June 2022 itself at around 9.00 am. The employee was examined by a private doctor before being taken to hospital for an x-ray. The matter was reported to the Defendant's Safety and Health Officer on the same day. However, the latter did not notify the relevant authority until 28 June 2022.

4. According to the evidence adduced, an employer may inform the ministry of any accident at work by phone, fax or in person. It is also borne out on record that the Defendant took cognisance of the employee's medical certificate only on Monday 27 June 2022. The latter had informed his employer of his medical situation through phone message on Saturday 25 June 2022. In Court, the Defendant's director, Graeme James Bristow, conceded that there had not been strict compliance with the law on the part of the Defendant and apologised. Furthermore, according to the prosecution, the Defendant has a clean record. Learned Counsel for the Accused has invited the Court to exercise leniency in passing sentence.

5. 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.*" An ankle fracture is on the list of injuries requiring immediate notification and any employer who fails to do so is 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.

6. In **Lin Ho Wah v. The State (2012) SCJ 70**, which was an appeal against sentence, 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."

7. I have considered the facts and circumstances relevant to sentencing in the present instance including the timely guilty plea, the apologies expressed on behalf of the Accused and its clean record. I order the Accused to pay a fine of Rs 3,000. The Accused shall also pay Rs 200. as costs.

10 May 2024

M. ARMOOGUM

Magistrate