**OSHI v UBS Transport Ltd**

**2025 IND 67**

**Cause Number 52/23**

**In the Industrial Court of Mauritius**
**(Criminal side)**

**In the matter of:**

**OSHI**

**v.**

**UBS Transport Ltd**

**Judgment**

Accused being an employer is charged under sections 5(1) and 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- Act 33 of 1974 with unlawfully failing on or about the eleventh day of January 2021 to ensure so far as is *"reasonable practicable"*, the *"safety and health"* of its employees at work namely one Alfred Joseph Jean Francois Fabrice sustained burn injury when the battery of bus bearing registration number 2371 AP 14 exploded while he was cutting the frame of the door which encases the battery with a grinder at his place of work at Les Cassis, Port Louis.

Accused through its representative has pleaded not guilty and has retained the services of Counsel at its trial.

**The case for the Prosecution rested on the evidence led by –**

(a) Ms. S. Simmandree in her capacity as Occupational Safety and Health Officer,

(b) the injured employee (Mr. Alfred Joseph Jean Francois Fabrice),

(c) Mr. Ahmad Issouf Beegoo and

(d) Mr. Ozeegur Hossen Sahabuddin.

(a) Ms. S. Simmandree in her capacity as Occupational Safety and Health Officer enquired into an accident at work which occurred on 11.1.2021 at the workshop of United Bus Services Ltd at Cassis, Port Louis, when Mr. Alfred Joseph Jean Francois Fabrice employed as Welder by the accused company sustained burn injury as per the medical certificate produced (Doc. A) when he was cutting the frame of the door which encased the battery of a bus bearing registration number 2371 AP 14 with a grinder, when the sparks flew over to the battery inside and it consequently caused the battery to explode.

She went to the locus of the accident on 18.1.2021 and she took a set of three photographs (Docs. B1-B3). During her enquiry, she recorded a statement from the Accused's Director, Mr. Yousouf Sairally, under warning (Doc. C) on 25.8.21. The accused employer submitted a report of the accident or dangerous occurrence dated 12.1.21 (Doc. D). After her enquiry she drew a report (Doc. E) on 26.8.21.

When she called to the locus of the accident on 18.1.2021, her main observation was that the battery involved in the accident could not be seen and consequently there was no photograph taken of that battery. Further, she candidly admitted that she did not put it to either the representative of the accused company or any worker working thereat that she had asked for the battery and that it could not be seen and whether it could be made available to her. Indeed, the photographs taken (Docs. B1-B3) reveal no trace of accident. She again admitted that she was not an expert when she made the deduction by way of opinion that the battery exploded due to the sparks going on the plastic cover of the battery which was melted by those sparks which got into contact with the content of the battery inside which was the acid which caused the explosion.

Mr. Ahmad Issouf Beegoo in his statement revealed to her that on the day of the accident, he had verified the bus concerned at 8.00 a.m. and that there was no

battery in it. There was no information about the battery between 8.00 a.m. and up to the time Mr. Alfred got injured. But she did not put that question to Mr. Beegoo.

**Her enquiry revealed**: -

When Mr. Alfred was using the grinder to cut the metal frame, sparks from the grinder deposited on the surface of the battery which was of plastic material and those sparks got in contact with the acid inside the battery which caused an explosion.

According to her report (Doc. E) following her enquiry:

*Mr. Alfred received instructions from his Supervisor Mr. Beegoo to assist Mr. Ozeegur known as Saffudine in doing works on that bus. When Mr. Alfred went to see Saffudine, the latter informed him that he had to remove the frame encasing the battery of the bus.*

*To do the job, Mr. Alfred used a grinder. While cutting the frame, there was an explosion and the liquid was splashed over him. Mr. Alfred felt a burning sensation on his face. He was wearing Personal Protective Equipment such as safety shoes, gloves, overall and welding glasses.*

*The accident occurred as the sparks of the grinder landed on the battery causing it to burn the surface of the battery consequently getting in contact with the acid which resulted in the explosion.*

*The accident occurred on 11.1.2021 and was notified on the same date by Management. The latter's views were given on 24.8.2021 which revealed that the work could have been done using a hammer and chisel if the battery was in the bus. Management also stated that Mr. Alfred should have checked whether there was a battery inside the bus before using a grinder. Mr. Alfred being a trainee welder, his supervisor for that work, Mr. Oozeegur should have assisted and supervised his work which he failed to do. Management stated that it could not be held liable for the omission of its employees for not performing their tasks properly.*

To prevent that accident from happening according to her: -

(i) A proper and suitable risk assessment should have been carried out by the Accused so that the risk could have been identified and mitigating precaution could have been taken.

(ii) A written procedure should have been written by the company and then training facilities could have been given to the employees where they would have been informed of the risk and hazard associated by using a grinder to cut the metal part of the bus where the battery was encased.

(iii) The accused employer should have informed the employees of the dangers associated by the sparks getting in contact with the battery and the content of the battery which caused the explosion.

(b) Mr. Alfred Joseph Jean Francois Fabrice on the material day of the accident, on 11.1.2021, he said that he was working as trainee welder for the Accused, although he said in his statement given at the Labour Office and which bore his signature, that he joined employment with the Accused in 2020 as Welder and not trainee Welder. He went on to say that from the year 2020 to 2025, he was still trainee welder. On 11.1.2021, he was instructed by Mr. Ahmad Issouf Beegoo that there was the encasing door of a battery that had to be cut and that he had to go and work with Mr. Ozeegur Hossen Sahabuddin and to take a grinder and cut that encasing. He further stated that he was also told by Mr. Ozeegur that same had to be cut and then, he took his grinder and cut it. There was a battery inside the encasing. He agreed that at no time he said in his statement that Mr. Ozeegur or Mr. Beegoo asked him to take the grinder and do the cutting. The angle the encasing was, he could not have used a hammer and chisel. He admitted that as per the Defence statement of Mr. Sairally, he decided on his own to use the grinder. Unfortunately, when he used the grinder to cut the encasing, he heard a loud noise when Mr. Ozeegur asked him to move away as the battery had exploded.

He thought that the noise came from outside and was not aware that the battery exploded because of the noise that was generated. When he moved away that he was asked to wash his face as the acid emanating from the exploded battery spread onto it. He did so and felt burning sensation at his face and hand and he was conveyed to hospital for treatment. At the time he was doing the grinding, Mr. Beegoo was on the other side and he asked him to deal with that particular bus number.

(c) Mr. Ahmad Issouf Beegoo in his capacity as Coach Builder on the material day, was working for the Accused and was in charge of the outer surface of the bus. Then, he asked Mr. Ozeegur to fix a panel of the bus as he was responsible for the work and as rotten metal had to be removed and replaced. At the time the encasing door was being removed, he was not present. He was not present in order to know the manner it was removed. Usually, it was removed with a grinder as it was routine work. On the day of the accident, the work ought to have been done in the same way. He was not present at the time of accident. He was Supervisor at the accused company. He did not inquire what went wrong or what problem was encountered on that day. But he happened to know that Mr. Alfred was injured meaning he got burnt at his hand and was conveyed to hospital for treatment. He did not inquire into the cause of the accident. However, he gave instructions to Mr. Alfred to go and fix the panel. In his statement dated 27.5.2021 wherein he identified his signature, he said that he went to check the bus concerned at about 8.00 a.m. and there was no battery in the bus.

(d) Mr. Ozeegur Hossen Sahabuddin on the material day, Mr. Alfred was using a grinder behind his back and caused a battery to be exploded. On that day he was working for the Accused and Mr. Alfred's back faced him. He was fixing the metal panels and he was instructed to work by Mr. Beegoo who was in charge. When he went to the site of work, he was instructed to carry out repairs meaning on the coach builder side where there were doors that had to be repaired as they were damaged. Mr. Alfred was instructed to come together with him by Mr. Beegoo. Mr. Alfred who came after him, knew that he had to remove that encasing. He was not facing Mr. Alfred, as he was at his back. Mr. Alfred took a grinder and started grinding when the sparks reached the battery surface and the battery exploded. When it exploded, he turned his back immediately, pulled Mr. Alfred from there, he put some water on his face to be washed as acid fell on it. The battery was disconnected but it was there on the site. He would not know that Mr. Alfred had taken the grinder by himself and started cutting. He gave a statement on 30.6.2021 and he identified his signature. He said therein that before he started working on the material day, he disconnected the battery in that bus.

**No evidence was led on behalf of the Defence.**

The Accused representative has denied the charge in his unsworn statement (Doc. C) produced in Court.

I have given due consideration to all the evidence put forward before me and the submissions of learned Counsel for the Defence.

The evidence led by the Prosecution has failed to establish beyond reasonable doubt the proximity of the battery to the encasing of the bus panel (which was being cut by means of a grinder). There is a lingering doubt as to the presence of the battery- (i) in the bus concerned at all, (ii) or in the encasing (iii) or somewhere disconnected in the bus. It is worth noting that Mr. Alfred thought that the explosion came from another source given the noise it generated.

Thus, there is no conclusive evidence that the battery being the purported cause of the explosion, was proximate enough to the use of the grinder. There is no expert evidence, for instance, a mechanical engineer who has deposed to the effect that the acid in the battery caused the explosion. It is relevant to note that the damaged battery was not found on the locus after the accident.

Thus, the lingering doubt that the battery was not involved in the explosion on the material day at all cannot be disregarded, so that the use of the grinder could not have caused the explosion which led to the burn injury sustained by Mr. Alfred (who had at least about one year's job experience at that particular point in time).

On that score, the Prosecution has failed to establish the manner in which Mr. Alfred (Accused's employee) sustained injury at his place of work on the material day by way of an explosion caused in the vicinity. At this particular juncture, I find it relevant to quote an extract from the case of **Babooram J. v Ministry of Labour [2013 SCJ 6]** at page 2, where the Supreme Court has clearly stressed on the scope of a place of work which reads 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;"".* **(emphasis added)**

It is also relevant to note that the provisions of *section 5(1) of the Occupational Safety, Health and Welfare Act (Act No. 34 of 1988)* have been consolidated in the provisions of section 5(1) of the Occupational Safety and Health Act – Act No.28 of 2005. Hence, the accused party is under a duty to provide a working environment that is safe and without risks to the health of its workers inasmuch as the meaning of *"at work"* is larger than on site. This is exactly where the importance of one element of the offence namely "welfare" comes into play as per section 5(1) of the Occupational Safety and Health Act – Act No.28 of 2005.

Section 5(1) the Occupational Safety and Health Act – Act No.28 of 2005 reads:

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

Now, section 125(1) of the District and Intermediate Courts (Criminal Jurisdiction) Act provides:

*"(1) The description in the information of any offence in the words of the law creating such offence, with the material circumstances of the offence charged, shall be sufficient."*

In the present case, the word "welfare" has not been averred in the information as rightly pointed out by learned Counsel for the Defence in the course of his submissions. Therefore, in view of the fact that the word of the law viz. "welfare" is missing in the information means that such a defect is fatal as it means that the

accused party has been charged with an offence unknown to law (*vide*- **Backreelall v R [1970 MR 180]**).

Although the word *"reasonable"* in the information can be cured by amendment so that it reads "*so far as is reasonably practicable"* pursuant to section 73 of the District and Intermediate Courts (Criminal Jurisdiction) Act (*vide* – **Venkiah v R** [1984 MR 62]), the missing word "welfare" cannot be cured by amendment, because such an amendment will have for effect creating an offence for the first time known to law at judgment stage and which did not exist at the time of trial.

For all the reasons given above, the information is dismissed against the Accused.

**S.D. Bonomally (Mrs.)** *(Vice President)*
**22.9.2025**