

OSHI v The District Council of Flacq

2025 IND 60

Cause Number 36/2020

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

In the matter of:

OSHI

v.

The District Council of Flacq

Judgment

Accused being an employer is charged under Sections 5(1) & 85(1)(a) 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 with unlawfully:

1. failing on or about the 20th day of April 2017 to ensure, so far as is reasonably practicable, the safety and health at work of one of its employees of one Dharamraj Auchoybur who sustained a fracture of his distal end right radius when he slipped and fell down from the lorry box of the lorry bearing registration number 11 Z 32 at its place of work at Baitka Road, Bon Accueil.
2. failing on or about the 20th day of April 2017 to forthwith notify the Director, Occupational Safety and Health by the quickest practicable means of an accident arising out of work which occurred at its place of work at Baitka

Road, Bon Accueil on 20th April 2017 and as a result of which accident one of its employees, one Dharamraj Auchoybur sustained a fracture of his distal end right radius while he was at work at Baitka Road, Bon Accueil.

The Accused through its representative, has pleaded not guilty to Count one and guilty to Count two and has retained services of Counsel at its trial.

The case for the Prosecution is to the following effect: -

Mrs. Tina Ramsurrun-Baznauth in her capacity as Occupational Safety and Health Officer gave evidence in Court.

She enquired into an accident at work which occurred on 20th April 2017 at Baitka Road, Bon Accueil when Mr. Dharamraj Auchoybur sustained injuries (as per the medical certificates produced namely Docs. A, A1-A4).

She proceeded to the locus of the accident on 4.5.2017, 10.10.2017 and 26.10.2017 where she took 4 photographs of the lorry concerned which she bound in 3 booklets with explanatory notes (Docs. B, B1-B6). She received a risk assessment dated 11.4.2016 to 20.4.2016 (Doc. C). She also received a copy of safe working procedures for refuse collectors dated 11.2.2016 (Doc. D). On 8.12.2017, 20.3.2018 and 3.3.2020, she recorded 3 statements respectively from Mr. Shaik Mohamed Hossen (Safety and Health Officer), the representative of accused company, as per Docs. E, E1 and E2.

Her observations in line with her report as per Doc. F are as follows: -

1. She observed the waste carrier lorry bearing registration number 11 Z 32 at the District Council of Flacq on the day of her investigation on 4.5.2017.
2. The lorry box was at a height of approximately 1m 36cm above ground level. As per information gathered, Mr. Auchoybur fell from the lorry box to the ground when he was emptying a waste bin in the lorry box and he slipped over a plastic bag.
3. At time of investigation, the lorry box was loaded with waste.
4. The lorry box had a two- sided back door and the lorry was found to be in good condition.

5. Handles were provided as support above on the two sides of the lorry box which extended from the back door to the cabin.
6. A handle was provided as a support to be used when mounting/descending the lorry and it was found near the lorry steps.
7. The steps were accessed by refuse collectors for waste disposal inside the lorry box and for egress by the same refuse collectors to the ground.
8. The said waste lorry box contained several types of waste, like domestic waste, food waste, green waste and plastics.
9. The surface and flooring of the lorry box consisted of a metal sheet. When a person was standing in the lorry box, it represented an open side with a foreseeable danger of fall from height.

Her enquiry revealed that –

Mr. Auchoybur who was a refuse collector was in the lorry box emptying the waste bin while holding it with both his hands and he fell. He slipped on a plastic bag inside, in the lorry box and he fell from the lorry box to the ground from a height of about 1m 36 cm. It was raining before the accident. Therefore, the surface meaning the flooring of the lorry box became slippery. He was wearing safety boots at the time of the accident and according to the Risk Assessment and the Safe Working Procedures submitted to her division, it was mentioned that employees namely refuse collectors should hold the handles provided in the lorry box while emptying the bins. The enquiry revealed that the refuse collectors held the handles when they stood in the lorry box while they had short distances to travel but could not do so while they were using both hands to hold the bins and emptying them.

To prevent the accident, a suitable and sufficient risk assessment should have been done, because when a person was standing in the lorry box, it was a foreseeable danger that he could fall from height and sustain injuries. Management would have then noted that even if they had mentioned that they should have a firm grip on the handles while they were emptying a waste bin, it was not practicable, because refuse collectors had to hold the waste bin with both hands when they were emptying it. Therefore, they could not hold the handles provided in the lorry box. A suitable and sufficient risk assessment should have been done to ensure that the danger was taken, was identified and suitable control measures were in place to prevent such accidents.

On 26.10.2017, a remedial action was taken by Management where they introduced an adjustable safety metal bar of about 2m 20cm long. It was meant for refuse collectors when they got in the lorry box so as to prevent them from falling down from the lorry box to the ground. Further, anti-slippery flooring has been added in the lorry box so as to prevent refuse collectors from falling off the lorry box. That was a remedial action provided by the Accused.

She was the sole enquiring officer. In April 2017, there were Safe Working Procedures put into place by the Accused as per Doc. D which were dated 11.2.2016. Therefore, at the time of the accident, there were already safe working procedures put into place by the Accused for refuse collectors. At para. 4 of Doc. D, the following is spelt out: "*Those responsible to empty baskets and bins in the cargo deck "caisson camion" should have a firm grip on the handles*". She confirmed that refuse collectors were advised to have a firm grip on the handles which were existent at the material time. However, the enquiry revealed that it was not possible. When refuse collectors were holding the bins loaded with waste, they picked the bins up and they were emptying, they had to hold the bins with both hands. Then, they could not hold the handles, that was why they could not have a grip on the handles provided in the lorry box, because they were holding the bins with both hands. Therefore, although it was mentioned as being a safe working procedure and it was advised that way, it was not practicable. That meant that Management had not truly investigated into how the accident could have happened, about how the work was being done and what were really the hazards in place and what could be done and what not. If Management had taken time to consider to do a suitable and sufficient risk assessment, they would have noted that when employees, when refuse collectors were holding the bins with both their hands, they could not hold the handles in the lorry box.

She could not recollect how many refuse collectors were inside, that is, in the lorry box when waste was being collected. She said that may be normally there should have been at least two refuse collectors in the lorry box when waste was being collected. She took that into consideration when conducting her enquiry. She was not aware that refuse collectors were instructed not to have both hands occupied with the waste bins. Because as per her enquiry, it clearly revealed that as per the statement taken from the person who did the job, that is, a refuse collector, she was clearly made aware that when they took the bins, when they were emptying the bins, that is, the action which was being made at the time of the accident, they could not

hold or have a grip on the handles, because they had to use both hands to empty the bins. She recorded statements from the persons involved in the accident and other witnesses as well and were facts given by them. The enquiry was conducted after the accident. She agreed that when she concluded her report which was based solely on the versions provided to her by the refuse collectors, because they were the ones who did the work. They would know what were the problems. Normally a risk assessment should be carried out by consulting those who did the work, who did the manual job and the Management should consider the people who were involved into doing it when they did the risk assessment. Then, they would have known that they could not hold the handles in the lorry box while they were emptying a waste bin. She was sure that she recorded a statement from the injured person and his Supervisor. That safe working procedure was not practicable. As per para.21, it was provided: "*Any identified hazard shall be immediately reported through gangman and site Health Inspector for necessary action to be initiated*". She could not recall about Management having been notified or informed about any identified hazard. She accepted that when waste was being collected, there had to be at least two refuse collectors in the lorry box. Normally when a waste bin was loaded, if two refuse collectors came, they were using both hands to lift it, to empty the bin. That was not practicable as it was revealed in the course of the enquiry that it was at the time of emptying, that the accident happened. They had to use both hands, not using one hand to hold the handle and using one hand to empty the bin which was not practicable. As per Doc. C. the risk assessment, there were two dates namely 11.4.2016 to 20.4.2016. There was a review date indicated therein being 11.4.2018. As per the last page of the risk assessment, the Accused had taken into consideration "slips/ trips/ falls on level" caused from high and falling object well before the accident. As per the said document, anti-slip boots were provided and at the material time, the injured person was wearing his anti-slip boots. It was also provided in that document that handles on both sides of the lorry box were provided for refuse collectors to have a firm grip on same to avoid falling and refuse collectors were advised to be more cautious on rainy days. It was raining on the material day. That refuse collector, the injured person, had to be more cautious on that day and had to avoid standing on the border of the lorry box when collecting waste, had to never stand on waste box while the lorry was moving. It was also provided that the lorry box should not be overloaded with waste and to be always kept closed when the lorry was moving.

Mr. Dharamraj Auchoybur, scavenger, gave evidence in Court. On the material day, he was working for the accused Council as refuse collector and had been doing so for 26 years. On the material day, there was a gangman in his company, it was raining and they were in the lorry box. When he carried the waste bin and lifted it to be emptied, he slipped and fell on the ground. When he was in the lorry box, there were two persons. They received waste bins from the ground. He lifted one to be emptied in the lorry box, but he slipped and fell down on the ground. He was injured at his hand. There were no shortcomings at the level of the Accused as he slipped as a result of an accident. He was literate up to the sixth standard only and he could not understand the contents of Docs. C and D.

Under cross-examination, he stated that he fell because it was raining and not because of the fault of the Accused. He was given boots, gloves and reflectors. The boots were anti-slip ones. He had all the protective equipment. The accident did not happen because of his imprudence.

Mr. Anatrah Ramsing, Supervisor, gave evidence in Court in relation to the present accident which happened on 20.4.2017. On the latter day, he was working for the Accused. At that time, he was Acting Supervisor. He had been working for the Accused for 26 years. The lorry stopped on that rainy day. The refuse collectors were giving wastes in the lorry box when there was plastic stuff on the border of the lorry and at the same time, Mr. Auchoybur slipped and fell suddenly. When he fell down, he told him that he was injured at his left hand. They had to do the work by being two in number. But when they found that the waste bins were light and that they could be lifted by one person to be emptied in another bin, it was being done by one person to prevent the refuse collector from waiting too long on the ground to get his waste bin back. The injured person slipped on a plastic waste and that was what caused the accident as the weather was not too good. On top of that, there was a lot of plastic stuff on the border of the lorry box. When the refuse collector was standing, he slipped. Should they have been two, may be the two workers would have been on the ground by having slipped on the plastic stuff because it was very dangerous when it was raining especially when someone was in the lorry box when all types of plastic stuffs came in. It could become a problem. They had to be vigilant.

Mr. Dharmaraj Mungroo gave evidence in Court. On 20.4.2017, he was working for the Accused as refuse collector. Before he retired, he had been working

for 23 years. The injured person fell in front of him because they were both working together. He fell on the ground. He would not know whether there was any shortcoming he said.

The Accused did not adduce any evidence in Court and has denied both charges in its unsworn statements.

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

The safe working procedures for refuse collectors (Doc. D) did not include all aspects of the activities which were being carried out. I agree with the contention of the enquiring officer that had there been a sufficient and suitable risk assessment, the employer would have identified the danger the employees faced when they were holding a loaded waste bin with both their hands in the lorry box to be emptied, could not hold the handles for support. Thus, no matter whether the handles were present or not, it did not make any difference in preventing the slip and fall from the lorry box to the ground leading to injury like in the present case.

The accident happened when Mr. Auchoybur was standing in the lorry box and emptying a loaded waste bin, when he slipped on a plastic bag as he was emptying the waste bin with both hands, he could not hold the handles which were provided in the lorry box for support as per Doc.B2. The risk assessment for refuse collectors as per Doc. C was not a sufficient and suitable one, as it did not mention the activity which was carried out at the time of the accident so that the risks associated with safety and health were not assessed by the Accused. Again, as per the "safe working procedures for refuse collectors" as per Doc. D which the enquiring officer received from Accused, no mention was made of the activity which had been carried out at the time of the accident. The risks of such danger were identified only after the accident and remedial action were taken accordingly. Had a specific risk assessment been carried out, the risks would have been assessed and identified then by the Accused in order to have rendered the system of work safe prior to the accident. Indeed, no evidence has been adduced by the Accused that it was not reasonably practicable for it to do more than was in fact done to satisfy the duty or requirement of safety pursuant to Section 96(6) of the **Occupational Safety and Health Act 2005.**

It is apposite to note that a safe system of work cannot be ascribed by the Accused before the accident, as it cannot be measured by the fact that “*(...) because no serious accident had occurred in the past that a system of work is necessarily compliant with the requirements of the Act*” (see- **The D.P.P. v Flacq United Estates Ltd [2001 SCJ 301]**).

For all the reasons given above, I find that the case for the Prosecution has been established beyond reasonable doubt as regards count one to the information. Given that the Accused has pleaded guilty to Count two, I find the Accused guilty as charged in relation to both Counts.

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

20.8.25