

**OSHI v Rey and Lenferna Limited**

**2023 IND 13**

**Cause Number 22417**

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

**In the matter of:**

**OSHI**

**v.**

**Rey and Lenferna Limited**

**Judgment**

Accused being an employer is charged under Section 5(1) and Section 94(1) (i) (vi) of the Occupational Safety and Health Act 2005 – Act No.28 of 2005 coupled with Section 44(2) of the Interpretation and General Clauses Act with unlawfully failing on or about the 20<sup>th</sup> of January 2015 to ensure so far as is reasonably practicable, the safety, health and welfare at work of its employees as a result of which one of its employees namely one Vencatachellum Giovani sustained injury when he fell from a ladder at its place of work at New Receptorium at SSR International Airport Plaisance.

The Accused represented by Mr. Arvind Cheenatur, in his capacity as Health and Safety Officer, pleaded not guilty to the information and was assisted by Counsel.

The particulars of the body of the information read as follows:

1. *No sufficient and suitable Risk Assessment was carried out to identify the risks to which the HVAC Technicians were exposed while performing air conditioning installation work at the workplace, i.e. site of AML Receptorium, Plaisance.*
2. *The ladder used by the employee was not of good construction, sound material and adequate strength.*
3. *The ladder was not securely fixed in a position so as to prevent it from slipping or falling, except that when impracticable a person shall be stationed at the base of the ladder to prevent it from slipping or falling when same is being used by its employee.*
4. *No information, instruction and training were provided to the employee regarding the safe use of ladders.*

The case for the Prosecution rested on the evidence given in Court by Miss Nabilah Bibi Bakady in her capacity as Occupational Safety and Health Officer, Mr. Vencatachellum Giovanni who is the injured person and his witness Mr. Kishan Hurkoo. On the other hand, the case for the Defence rested on the evidence given by the Accused's representative, Mr. Arvind Cheenatur, in his capacity as Health and Safety Officer.

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

The un rebutted evidence emanating from all Prosecution witnesses and the representative of the Accused boils down to the following:

1. An accident at work occurred on 20 January 2015 at New Receptorium SSR International Airport Plaisance whereby one Mr. Vencatachellum Giovanni sustained injuries at his left thigh as per the medical certificate produced viz. Doc. A at his place of work while he was going down a wooden ladder when its second top rung broke and which caused him to lose balance and fall down although there was another colleague at the top of him on that ladder.
2. Accused was a subcontractor dealing with the electrical, mechanical and installation of air conditioning at the roof level of the building in relation to the construction project of that building undertaken by the main contractor namely

the Nundun Gopee company for the AML Receptorium as per the letter of award of contract namely Doc. G.

3. The main contractor provided all the structure meaning the scaffolding, ladders and all other working equipment to the workers of Accused and it was the one who gave instructions to the Accused through its employees as to where the works were to be done and there was supervision at all times from the said main contractor through its said employees. The accused company following such instructions received from that main contractor in turn had its supervisor which in the case of the injured person and his witness, Mr. Kishan Hurkoo, to give instructions to them to carry out the work which dealt with air conditioning installations at the roof of the AML Receptorium.
4. The team of Accused had been on that site of work for about six months and on the material day namely on 20.1.2015, there were several technicians working in relation to the installation of air conditioning at the roof top and they had to do overtime after their dinner to finish that work on that day as per the will of the main contractor being implemented by the Accused through its workers including the injured person.
5. The ladder used by the injured person at the material time was used during the whole day by the workers bearing in mind which could have been any other employee be it in the employment of the Accused or in the employment of the main contractor.
6. The main contractor was responsible for health and safety of workers at the site of work and which could be met by a risk assessment exercise being carried and measures taken which *inter alia* would have included training. Then only, the subcontractor viz. Accused would also be required to carry out a risk management exercise pursuant to the tasks being given to it and before assigning such tasks to its employees, it was then its duty to verify the health and safety aspect.
7. Such training as regards the use of a ladder was given to its employees by Accused although not on the material day.

8. The accident was not caused by a lack of training or a misuse of the ladder concerned, but because the said ladder was not in good condition.

Thus, it is clear enough that the present accident could have happened to any employee in the employment of the main contractor and to any employee not in its employment meaning in the employment of Accused.

There is no evidence borne out by the record to the effect that the wooden ladder involved in the present accident was visually not fit for use at the material time, bearing in mind that the employees of Accused including the injured person were provided with such equipment by the main contractor which supervised the work through its employees at all times.

Furthermore, the Accused although it gave safety instructions to its employees as regards the use of the ladder, yet it would not have known how the wooden ladder concerned was kept after use during the whole construction period including the six months when the employees of Accused had been working on site (bearing in mind that all the equipment for the structure meaning equipment like scaffoldings and ladders were provided for by the main contractor) so that it could really assess the state of the quality and strength of that wooden ladder at the material time.

Hence, it is abundantly clear that it was not reasonably practicable for the Accused, a subcontractor, in the present case to have ensured that the ladder concerned forming part of the equipment provided for by its main contractor *was not of good construction, sound material and adequate strength* at the material time when it was in use for the whole day by the workers so that its second top rung was likely to break thus, causing injuries to one of its workers namely Mr. Vencatachellum Giovanni.

For all the reasons given above, I am unable to find that the case for the Prosecution has been proved beyond reasonable doubt and the case is accordingly dismissed against the Accused.

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

**28.2.23**

