OSHI v Best Construct Co Ltd

2025 IND 75

THE INDUSTRIAL COURT OF MAURITIUS

(Criminal Side)

In the matter of:-

CN 254/2021

OSHI

v.

Best Construct Co Ltd

JUDGMENT

1. The Accused stands charged for having unlawfully failed to ensure, so far as is reasonably practicable, the safety and health at work of one of its employees – under Count I of the information – in breach of sections 5(1) and 94(1)(i)(vi) of the Occupational Safety and Health Act 2005 (OSHA), and unlawfully failed to forthwith notify the Director, Occupational Safety and Health of an accident arising out of or in connection with work by the quickest practicable means – under Count II – in breach of sections 85(1)(a) and 94(1)(i)(vi) of the OSHA. The Accused has, through its HR Manager, pleaded not guilty to both counts.

2. Principal Occupational Safety and Health Officer Simmandree, who investigated into the matter, deposed to the effect that an accident occurred on 30 August 2018 at Gaulettes Serrés, Saint Julien d'Hotman whereby one Parmessur Casseeram suffered crush injury at his right foot. At the material time, Mr. Casseeram, who was employed by the Accused as helper, was reaching out for diesel found in a plastic container kept in the space between the cabin and the dump bed of a company lorry driven by one Nunkishore Gooreeah. According to Ms Simmandree, following a miscommunication between Messrs. Casseeram and Gooreeah, the latter slowly drove the lorry ahead and inadvertently ran over Mr. Casseeram's right foot. The witness

opined that there was no safe system of work in place. In relation to Count II, Ms Simmandree asserted that the Ministry was not given immediate notification of the accident, but a letter emanating from the Accused was received a few days later, namely on 05 September 2018, informing the Ministry of what had happened.

3. Mr. Casseeram gave evidence regarding the circumstances of the accident. He related the task assigned to him on the material day and the unfolding of events. He explained that, at one point in time, whilst he was running towards the lorry, he slipped and fell. The lorry driver, who did not notice what had happened, moved the lorry and drove over his foot.

4. Mr. Gooreeah confirmed the version of Mr. Casseeram insofar as he is concerned. He stated that he was unloading material from his lorry when he heard his colleague shouting. It was only then that he realised that the latter had his foot caught up in the lorry's wheel. Mr. Gooreeah immediately got off his vehicle to attend to his injured friend.

5. No evidence was called on behalf of the Accused. Its version is contained in the out-of-court statement given by the Accused's representative at investigation stage **(Document G)**.

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 contravention of the Act constitutes an offence.

8. The duties imposed on employers may take a variety of forms, all geared towards ensuring the safety of workers by setting out responsibilities on employers – *vide* **General Construction Company Limited v. Occupation, Safety and Health Inspectorate, Ministry of Labour, Industrial Relations and Employment (2020) SCJ 40**.

9. Referring to English authorities on the duties of employers towards their employees and quoting with approval from **R v. Chargot Ltd and others [2008] UKHL 73**, the Supreme Court in **Director of Public Prosecutions v. Mauritius Meat Authority (2024) SCJ 209** held:

> "*These duties are not, of course, absolute. They are qualified by the words "so far is reasonably practicable" …*
>
> *What the prosecution must prove is that the result that those provisions describe was not achieved or prevented.*
>
> *Once that is done a* prima facie *case of breach is established. The onus then passes to the defendant to make good the defence which section 40 provides on grounds of reasonable practicability …".*

10. In the present matter, the case pitched by the prosecution against the Accused, as gauged from the testimony of Ms Simmandree and her report on the accident **(Document J)**, is that the Accused company failed to carry out an appropriate safety and risk assessment regarding the storage of diesel. The enquiring officer also pointed to a lack of efficient communication system among workers, a matter which, I must highlight, is not alluded to at all in the Accused's defence statement. Be that as it may, in Court it was the prosecution's case that the shortcomings in the system of work put in place by the Accused led to Mr. Casseeram's injury and amounted to a failure on the part of the employer to comply with its statutory obligation.

11. Count I is particularised as follows in the information: *"… one Parmessur Casseeram sustained crush injury to his right foot when lorry with registration number 3222 AP 15 moved forward while he was removing a plastic container from the aforesaid lorry at his place of work at Gaulettes Serrés, Saint Julien d'Hotman."* After careful consideration of the evidence ushered in by the prosecution, I have not been convinced that the charge laid against the Accused under Count I of the information has been established to the required standard. When one peruses the record, it appears doubtful that the alleged inadequacies in the Accused's system of work, as suggested by the prosecution, resulted in Mr. Casseeram's injury.

12. It is to be noted that neither Mr. Casseeram nor Mr. Gooreeah referred to any shortfalls in the system of work they operated on the day in question. In fact, the only witness to depose on the exact circumstances of the accident is the injured person

himself, namely Mr. Casseeram. He had this to say: *"... letan mo galoupé mo pe vini, monn glissé. Mo chauffeur pane trouve moi parski ena beaucoup tapaz. Mo pé crié même, ena bâtiment la bas, l'usine la bas, craze roche, la poussière levé, pas pou trouvé. Mais quand mone vini, mone glissé, ena enn ti la pente la. Couma mone vini, mone glissé, chauffeur pane trouve moi."* In the circumstances, the accident cannot be attributed to the Accused and it cannot sensibly be said that the latter failed to ensure, so far as is reasonably practicable, the safety and health of its employee. It is an unfortunate occurrence that Mr. Casseeram slipped and ended up in the wrong place at the wrong time, and the Accused cannot be made to shoulder the blame for that.

13. I shall now turn to Count II of the information. Section 85 of the OSHA provides:

> ***"85. Notification of occupational accidents and dangerous occurrences***
>
> *(1) 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, or where there happens a dangerous occurrence specified in the Twelfth Schedule, the employer shall—*
>
> *(a) forthwith notify the Director, Occupational Safety and Health by the quickest practicable means; and*
>
> *(b) within 7 days, send a report thereof to the Director, Occupational Safety and Health, in the form set out in the Thirteenth Schedule.*
>
> *(2) The employer shall keep a record of all accidents and dangerous occurrences required to be reported under subsection (1)."*
>
> [Underlining is mine].

14. A reading of the above provision indicates the clear intention of the legislator to create two distinct mechanisms of notification. Firstly, the employer is required to immediately notify the Director when an accident at work happens involving one of the injuries or occurrences listed at the Eleventh and Twelfth Schedules of the OSHA, respectively. This notification has to be done as soon as is reasonably possible by any readily available means, be it by telephone, fax, email or the like. Secondly, within a week of the work accident, the employer is required to send a report on same in the form prescribed at the Thirteenth Schedule of the OSHA, providing additional details on the injured person and the circumstances surrounding the accident. Therefore, the

law imposes on the employer the obligation to make two separate notifications, and failure to make any one of them constitutes an offence.

15. Here, it is not contested that Mr. Casseeram's injury was the *"result of an accident arising out of or in connection with his work."* It is also not disputed that, under paragraph 10 of the Eleventh Schedule, the injury sustained by Mr. Casseeram required immediate notification as it was one *"… which result[ed] in the person injured being admitted into hospital for more than 24 hours"* – *vide* **Document A**. The evidence shows that by letter dated 03 September 2018 **(Document C)** – which the Ministry asserts having received two days later – the Occupational Safety and Health Inspectorate was informed of the work accident which occurred on 30 August 2018. Annexed to that letter was a report drawn up pursuant to the Thirteenth Schedule. It is hence evident that the employer proceeded straight to the second leg of the notification process, without having fulfilled the initial immediate notification requirement imposed by section 85(1)(a) of the OSHA. By being oblivious to that obligation, the Accused fell foul of the law.

16. I note that witness Ms Simmandree was barely cross-examined in relation to Count II, such that her evidence in relation to that charge has remained unshaken and unrebutted. I, thus, find it safe to rely on the prosecution's evidence in relation to Count II and find same proved beyond reasonable doubt.

17. For all the above reasons, I dismiss Count I of the information. The Accused is found guilty under Count II.

06 November 2025

M. ARMOOGUM

Magistrate