

**OSHI v Gokhool Engineering & Constructions Company Ltd**

**2025 IND 79**

**Cause Number 78/22**

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

**In the matter of:**

**OSHI**

**v.**

**Gokhool Engineering & Constructions Company Ltd**

**Judgment**

Accused being an employer stands charged under section 5(1) and section 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 failing on or about the fifth day of October 2018 to ensure so far as is reasonably practicable, the safety and health at work of one of its employees namely one Mr. Kareeman Azad Rustom who sustained injuries while working in an excavated trench when the edge of the trench situated at its place of work at Roches Brunes collapsed.

The Accused representative pleaded not guilty to the information and was assisted by Counsel at his trial.

Mr. Premsingh Seetohul in his capacity as Acting Principal Occupational Safety and Health Officer gave evidence in Court.

On 5.10.2018, Mr. Azad Rustom Kareeman was working for Accused under the supervision of Mr. Mohamed Siddick Oozeer at Roches Brunes Road near the substation of CEB where excavation works were being carried out. He had to work in the excavated trench to signal the backhoe loader operator of the presence of 22Kv underground electrical cables when suddenly the edge of the trench collapsed and he sustained injury.

His observations as per his accident report (Doc. D) are as follows:

1. He called at Roches Brunes Road on 18.10.2018 where Mr. Mohamed Siddick Oozeer, Foreman, was met. He took a set of 3 photographs as per Docs. B1, B2 and B3.
2. The locus of accident was seen and it was observed that excavation works were in progress along Roches Brunes Road.
3. Excavation work was being carried out using a backhoe loader.
4. Excavated rock and soil materials were kept on the edge of the excavation.

His enquiry as per his report (Doc. D) revealed:

- (a) On 5.10.2018 excavation of a new trench for optical cable work had to be carried out along Roches Brunes Road.
- (b) The dimension of the trench that had to be excavated was of depth of 1m400mm and width of 500mm.
- (c) There was the presence of existing 22kV underground cables along Roches Brunes Road which has been confirmed by the Officer in Charge of the Central Electricity Board in a letter dated 7.9.2020(Doc. G).
- (d) While the backhoe loader was excavating the trench, Mr. Kareeman, the injured employee, was instructed to enter the trench to be able to signal the backhoe loader of the presence of the 22kV underground cables.
- (e) Excavated rock and soil materials were stacked on the edge of the excavation.

- (f) At about 12.45 hours, Mr. Kareeman was in the trench when suddenly the edge of the trench collapsed and he sustained injury.
- (g) He was conveyed to Victoria Hospital, Candos where he was admitted on the same day and was transferred to Welkin Hospital on 7.10.2018 where he was admitted in the Intensive Care Unit.
- (h) Mr. Kareeman sustained fracture right iliac bone, left superior pubic ramus at junction with the ischium and left inferior pubic rami, fracture of lower sacrum at S4-S5, widened left Sacro-Iliac joint space and symphysis pubis.

His findings as per his said report:

- (i) No sufficient and suitable risk assessment was carried out for the excavation work to be carried out near 22kV underground cables at Roches Brunes Road.
- (ii) No safe system of work was implemented for the excavation works to be carried out near 22kV underground cables.
- (iii) Excavated rock and soil materials were stacked on the side of the excavation which caused the edge of the trench to collapse.
- (iv) No appropriate measures were taken to prevent accidental collapse of the edge of the trench.
- (v) No appropriate information, instruction and training and supervision were provided to ensure the safety and health of Mr. Kareeman.

On 9.2.2021, he convened the Accused whose Director, Mr. Farouk Gokhool, who gave a defence statement under warning as per Doc. C wherein he denied the charge.

The Prosecution's case rested on the evidence given in Court by Mr. P. Seetohul (the enquiring officer) and Mr. A.R. Kareeman (the injured person) while the case for the Defence rested on the evidence given by the Foreman of Mr. Kareeman, Mr. M. S. Oozeer, and the Director Mr. F. Gokhool. Their combined evidence boils down to the following:

1. None of the photographs taken be it by the Prosecution (Docs. B1, B2 and B3) or the Defence (Doc. H) show that there was about 1-2 tons of excavated

soil material stacked on both sides of the excavated trench, but only a little amount.

2. The only photograph for which there is consensus that it is the locus of the accident is Doc. B1. It shows that the trench had already been filled up and very little soil material was found on the site.
3. According to Mr. Seetohul, at the time of accident, Mr. Kareeman was in the excavated trench when suddenly, the edge of the trench and the excavated soil collapsed and Mr. Kareeman was trapped in the trench. He further stated that the worker should not have been asked to get in the trench while the backhoe loader was excavating the land and soil materials were being kept on the side of the excavation. The process of excavation should have been stopped then and any other work should have been done manually by an employee. The risk assessment done by Accused prior to the accident (Doc. E.) was a general one.
4. Mr. Kareeman said that while he was in the excavated trench, because of the shock created by the backhoe loader machine being turned on for excavation of the land, caused the soil and rocks including soil under a bamboo tree to be fallen on him which was about 2 tons. He was experienced in working in excavated trenches and he knew the risks and dangers involved as he himself was a Subcontractor at some point. He was a general worker and was instructed to work by his Foreman, Mr. Oozeer. He did not say that it was the edge of the trench that collapsed.
5. Mr. M. S. Oozeer stated that Mr. Kareeman was experienced in working with the soil, excavation and passing of cables. It was not possible for the excavated soil to fall on that worker, as it was not authorised by CEB to stack such soil on the road edge. It was the road edge which collapsed on one side and it was unexpected and which fell on Mr. Kareeman. It was not the excavated soil from the trench that collapsed. It was not possible to put scaffolding. Mr. Kareeman had received sufficient training. There was protective equipment being supplied like protective gloves, boots and uniform with marking of highlight. There were no shortcomings as regards health and safety. They were not soil and rocks that fell on Mr. Kareeman and he was

well trained for the job he did on the material day although there was nothing in writing to that effect.

6. Mr. F. Gokhool in his capacity as Director of accused company stated that Mr. Kareeman had been working for the Accused for quite a long time and he was used to doing the kind of work he did on the material day. Prior to the accident, a risk assessment was done in November 2017 as per Doc. E. He was asked specifically by Mr. Seetohul whether he did a risk assessment in relation to the specific site where the accident occurred which he said he did and had one but he was never asked for a copy of that document. There was a particular risk assessment made for Roches Brunes. Mr. Kareeman also lodged a case before the Supreme Court claiming damages from Accused as per Doc. K. He had averred in his plaint at paragraph 14 that shortly after he had started working, a landslide occurred with bamboo trees, soil, rocks and other debris from the top of the irrigation pipe falling down the trench where he was standing and he found himself covered up to his torso. A statement was recorded from the injured person as per Doc. L. wherein he did not describe the circumstances of the accident. Mr. Gokhool denied the charge as Accused did absolutely all to ensure the safety of the injured person and paid for all his medical expenses and he was not cross-examined at all by the Prosecution.

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

I find that the Prosecution has fallen short of establishing its case beyond reasonable doubt for the following reasons:

- (a) There are divergent views about the cause of the accident resulting to injuries sustained by Mr. Kareeman namely it is doubtful whether it was caused as a result of the edge of the excavated trench collapsing or of the excavated soil near the edge of the trench among rocks and other soil under a bamboo tree having been swayed and fallen in the trench as a result of shock caused by the machine while excavating the site or whether it was the edge of the road that collapsed having nothing to do with the trench which was unexpected.

- (b) There is no evidence from an expert namely an Engineer to the effect that the shock caused by the backhoe loader machine while the excavation work was ongoing, could cause the edge of the trench at such site to collapse so that a worker finding himself in the trench ran the risks of sustaining injuries.
- (c) The only photograph (Doc. B1) taken by the Prosecution where there is consensus where the accident took place could not confirm whether the accident occurred as a result of the edge of the trench having collapsed as per the information as the trench was already filled up so that no collapsed edge of trench was apparent.
- (d) The injured person said that he was experienced in working in such trenches and was aware of all the risks and dangers involved and that he was even a Subcontractor at some point. Indeed, the combined unrebutted testimonies of the two Defence witnesses confirm that he was trained for the job he did at the material time and that there was a risk assessment done in relation to that specific site at Roches Brunes for which the enquiring officer did not ask, but was contented with a general risk assessment as per Doc. E. so that the accident was unexpected.

Thus, in the light of all the reasons given above, I am unable to find that the case for the Prosecution has been established beyond reasonable doubt in that the said accident which occurred resulting in injuries being caused to Mr. Kareeman was as a result of an unsafe system of work of Accused.

Accordingly, I dismiss the information against the Accused.

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

*(Vice President)*

**21.11.25**

