

OSHI v Denim de l'Ile Limited

2025 IND 35

THE INDUSTRIAL COURT OF MAURITIUS
(Criminal Side)

In the matter of:-

CN 31/2023

OSHI

v.

Denim de l'Ile Limited

SENTENCE

1. The Accused company is charged for having failed to ensure, so far as is reasonably practicable, the safety, health and welfare at work of its employees, in breach of section 5(1), coupled with section 94(1)(i)(vi), of the Occupational Safety and Health Act 2005 (OSHA). Following its guilty plea, the Accused now stands convicted.

2. A hearing was held into the circumstances of the case. It came out in evidence that on 10 October 2021, an accident at work occurred in the chiller room of the Accused's spinning department situate at Royal Road, L'Ile D'Ambre, Rivière du Rempart whereby one Kumaren Runghen, who was employed as foreman, sustained laceration at his right foot. The enquiry led by the Occupational Safety and Health Division of the Ministry of Labour, Human Resource Development and Training revealed that, whilst accessing the chiller room, the employee slipped and was caught up in the rotating coupling of the motor driven pump. The evidence indicates that, at the material time, the rotating coupling of the pump was exposed, creating a health and safety hazard. According to the Accused's management, the guard to the rotating

coupling had been removed by the maintenance team for repairs, but was not put back in place. This was remedied following the accident. Moreover, a training session for the maintenance team was carried out to reiterate the importance of placing safety guards back after repair works.

3. The Accused's representative, Mr. Gurriah, solemnly affirmed in Court that the victim has fully recovered. He was paid in full during his recovery period and no leave was deducted. The pumps have been replaced by a safer model and training has been done to ensure no recurrence. Mr. Gurriah tendered apologies on behalf of the Accused.

4. Learned Counsel appearing for the Accused highlighted the mitigating factors in this case and invited the Court to impose a minimal fine.

5. In **General Construction Company Limited v. Occupation, Safety and Health Inspectorate, Ministry of Labour, Industrial Relations and Employment (2020) SCJ 40**, the Supreme Court highlighted that "*the legislator's intent behind OSHA is to ensure the safety of workers and OSHA therefore sets out the responsibilities of the employer in that regard.*"

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 person who contravenes a provision of the Act shall commit an offence, and the employer is liable "*to a fine not exceeding 75,000 rupees and to imprisonment for a term not exceeding one year*" pursuant to section 94(3)(b) of the OSHA.

8. In **Mosaheb v. The State (2010) SCJ 150**, the Supreme Court held that "*the sentence in each case has to be determined in accordance with the facts and circumstances surrounding the commission of the particular offence and the other*

relevant personal circumstances of an accused party." Moreover, in **Hossen v. The State (2013) SCJ 367**, the Supreme Court stressed the need to apply the principle of proportionality to reach the appropriate sentence in any given case – *vide also Lin Ho Wah v. The State (2012) SCJ 70*.

9. I have considered all the facts and circumstances of the case. I find that this accident at work could have been avoided had the safety guard to the rotating coupling of the pump been put back in place. It is not contested, however, that new and safer equipment is now being used. I note that the Accused is borne on record for cognate offences (**Document X**), one of which dating back to the year 2011. I consider the timely guilty plea offered in this case, and the co-operative attitude of the Accused, to be significant mitigating factors.

10. Bearing in mind all the above considerations, I sentence the Accused to pay a fine of Rs 7,000. The Accused shall also pay Rs 200. as costs.

09 May 2025

M. ARMOOGUM

Magistrate