

OSHI v Compagnie Mauricienne de Textile Ltee

2025 IND 64

Cause Number 152/17

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

In the matter of:

OSHI

v.

Compagnie Mauricienne de Textile Ltée

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 having unlawfully failed to ensure so far as is reasonably practicable the safety and health at work of one of its employees namely one Mohammad Nizam Toorubally who sustained injury to his left foot when he fell in the space between the walking platform and the rollers of a stenter machine at its place of work at La Tour Koenig.

Accused represented by Mr. Mokshanand Dowarkasing in his capacity as Administrative Manager pleaded not guilty and was assisted by Counsel.

The evidence led by the Prosecution unfolded as follows: -

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

He enquired into an accident at work where Mr. Nizam Mohammad Toorubally, Finishing Supervisor, sustained soft tissue injury to his left knee (as per the medical certificate produced viz. Doc. A) when he fell in the open space of about 9 cm between the toe-board of the walking metal platform and the exposed rollers of the Bruckner stenter machine (as per Docs.B1, B2 & B3) on which he was working.

Mr. P. Seetohul called at the finishing section of Compagnie Mauricienne de Textile Ltée on 31 October 2012 and he took four photographs as per Docs. B1 -B4. He recorded a statement under warning (Doc. C) from Mr. Purseramen Cougen Naidu Gopala Krishna, Unit Leader, duly authorized by the Accused on 2.7.2013.

His observations in line with his report (Doc. D) were as follows:

1. The machine involved in the present accident was a stenter machine, make Bruckner, which was used to straighten fabrics.
2. There was a metal platform provided to the machine on which the operator had to stand to feed fabrics to the pinning device.
3. The metal platform was 2m80cm long and 98 cm wide. In addition, it had a toe-board of about 8 cm high. The height from the platform to the horizontal level of the pinning device was about 105 cm. There were six rollers arranged in a staggered manner and they were accessible from the front of the machine.
4. The operator had to stand where the front part of the machine was, to straighten the fabrics. In order to be able to do so, there was a walking platform and a toe-board thereon where the operator had to stand. The distance from where the operator had to stand on the platform to the reach of the pinning device was about 75 cm. There was a space of about 9 cm between the toe-board of the platform and the exposed rollers of the machine. Employees could fall in that open space of about 9cm leading to injury being caused to them.

5. The injured person was standing on that toe- board at the time of the accident when he fell through that open space. In fact, he was operating the machine. He had already pinned fabrics on the top on the left part of the machine and while he was moving from the left to the right part, he fell through in that open space between the rollers and the platform.
6. Mr. Nizam Mohammad Toorubally, the operator, had to lean for about 75 cm from the platform so as to have access to the pinning device. He had to bend forward for about 75 cm to pin the fabrics which were at the top. When he had leant and there was that open space in front of him, there was a risk that he could fall.
7. Doc.B4 was a photograph of another stenter machine found in the same factory but the make was different as it was a Monfort 1. But its rollers were securely fenced and access to the open space between the platform and the rollers was restricted.

His enquiry revealed -

- (a) On 15.11.2011 at about 14.15 hours, Mr. Toorubally, the operator, had to feed fabrics on the stenter machine.
- (b) He stopped the machine and after having pinned the fabrics on the left side of the machine and while he was moving to the right side on that walking metal platform to feed the machine, he fell in that open space.
- (c) While Mr. Toorubally was moving from the left side to the right one, his left knee hit the metal platform and he fell through that open space of the machine between the rollers and the platform which was not securely fenced.
- (d) In order to prevent the accident, the open space between the rollers of the machine and the metal platform, should have been securely fenced.

Under cross examination, he conceded that he went to the place where the accident happened on 31.10.2012 which was nearly a year after the accident (November 2011 - October 2012). The machine was shown to him the way it was

being operated on the day of the accident in November 2011. Fabrics from that machine passed under the platform and went up. According to the injured person, according to his height and the height of the machine, to have access to the pinning device, he had to stand on that toe-board at the material time. As per the stenter machine manual, the machine had already been modified for accepted safety standards for a country like Mauritius (Doc. E) so that its manual did not say that those rollers had to be fenced.

However, the enquiring officer maintained that the rollers had to be fenced. He relied on the fact that there was another stenter machine make Monfort 1 in that factory doing the same job and that machine had its rollers fenced. However, he conceded that they were two different brands fabricated in different manners.

He further conceded at some point that the rollers could be pulled and pushed and were adjustable. Nevertheless, he did not agree that the Accused did not fail as far as was reasonably practicable to ensure the safety, health and welfare of its employee namely Mr. Toorubally. He maintained that the rollers of the machine concerned had to be fenced although it was not written in the manual emanating from the manufacturer of the brand.

Mr. Mohammad Nizam Toorubally, the injured person, gave evidence in Court.

On 15.11.2011, he was working for the Accused as Supervisor. There were Indian employees who came to work on that working machine at the finishing section and he had to supervise them. He was instructed to work by Mr. Vikram Malary who in turn supervised his work.

As it was recess time when the Indian employees namely the operators went out, as instructed by Mr. V. Malary, he had to replace them by working on the machine and when he intervened, he was injured.

He had to stop the machine in order to feed the fabric on both the left and right sides to the pinning device of the machine. When he finished stretching the fabric on left side, he put his left foot on the metal border of the platform meaning on the toe-board to be able to get a support to feed the fabric well into the right side which he did. He had to stand and tilt a little forward to get access to the fabric on the machine which was about 75 cm away (Doc. B3). All the time he had to step on the toe-board

to carry out his work namely to feed the fabric. There was no other way to do that but by standing on the platform. He had to stand on the platform of 98 cm wide where his right foot was. But then, while he was going to do the right side, when his left foot twisted resulting in his left knee to hit that metal border and then his left foot was led to the corner of the machine squeezed into the rollers down there. However, he maintained that it was not necessary for the rollers to be guarded for the 23 years he had worked with fabrics on stentor machines till the year 2011 when he had 12 years' experience as Supervisor in the finishing department.

It was not a new job for him as Supervisor. He was aware how the stentor machine concerned functioned. It was a Bruckner brand and he had been working on that machine for 12-13 years when he was injured. He was fully conversant with that machine. As per Doc. B1, the rollers could be pulled as they were adjustable. When he applied pressure on the roller, it caused the fabric to open. The rollers had to be pulled and pushed and were accessible when he was working. Had the rollers been guarded, he would not have had access to them. When standing on a platform, he would have been able to work by adjusting a roller meaning either by pulling it or by pushing it. He had been working on that machine for about 13 years and there was no case for which he was concerned in relation to that machine. When he joined employment, the machine was already present. He knew that machine well as he learnt his job on that machine itself. He had at no time made any complaint to anyone in authority as to why the rollers were not fenced or guarded. His job was to supervise the Indian employees working and he had to give them instructions. As per a letter emanating from Bruckner (Doc. E), there was no need to have the rollers of the machine guarded. Nearby, there was another machine which had its rollers fenced.

Mr. Vickram Malaree in his capacity as operations manager gave evidence in Court.

On the day of the accident, he was working for the Accused. He was responsible for the finishing for the production of fabrics and had been doing that job for 8 years. He did not remember what happened on the material day, how the accident occurred and he confirmed the same in cross examination.

No evidence was adduced on behalf of the Defence.

The Accused denied the charge in its unsworn statement (Doc. C).

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

It is abundantly clear from the un rebutted evidence of the injured Supervisor that it materialized that support was needed on the metal platform itself which contained a toe-board in order to feed the fabric in the pinning device of the machine for straightening purposes caused by the rollers which could be pushed and pulled. The Supervisor reckoned 23 years' experience on stentor machines and about 13 years' experience on that machine at the finishing section. Yet, his left foot twisted on the metal platform resulting in his knee to hit that metal platform. Now, irrespective of the presence or absence of the fenced open space, the accident would have happened leading his knee to hit the metal platform as his foot twisted and which would have led to injury sustained by him be it in the form of tenderness or otherwise. Therefore, the said open space of about 9 cm was not the cause of the accident but at most could have a bearing on the extent of injury only sustained by that Supervisor.

Thus, I take the view that a fenced open space between the platform and the rollers would have minimized the extent of the injury only, as the cause of the accident was a lack of a safety support on the platform itself like, for example, a two metal bar hand rail erected from the bottom plate of the walking metal platform erected in such manner in order not to impede access to the rollers for adjustment and to the pinning device of the machine. Indeed, the injured Supervisor stressed that he had to tilt a little forward for about 75 cm and to seek support at his foot on the toe-board of the platform in order to feed the fabric in the machine. Now, even if the Supervisor had then twisted his foot, his knee would not have hit the platform or its toe-board as he would have gripped the two-metal bar handrail for support to prevent him from losing balance and he would have maintained his equilibrium throughout and the accident would not have happened. The absence of such a support of the kind mentioned above on the platform itself was the cause of the accident which lends support to the contention of the injured Supervisor who was adamant that he never deemed it necessary to inform his Senior or Management that the rollers in the open space of about 9 cm had to be fenced. That imperative aspect was totally overlooked by the enquiring officer in order for the Accused to discharge the burden placed upon it namely that it was not reasonably practicable for it to do so. Moreover, the enquiring officer accepted when cornered in cross examination

that the operator was able to pull and push the rollers in the straightening process of the fabric fed in the machine.

For all the reasons given above, I am unable to find that the case for the Prosecution has been proved beyond reasonable doubt. Being in duty bound, I dismiss the information against the Accused.

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

5.9.2025