

OSHI v Seven Seven Co Ltd

2025 IND 43

THE INDUSTRIAL COURT OF MAURITIUS

(Criminal Side)

In the matter of:-

CN 129/2024

OSHI

v.

Seven Seven Co Ltd

SENTENCE

1. The Accused company has pleaded guilty for having (i) failed to ensure, so far as is reasonably practicable, the safety, health and welfare at work of its employees – breach of section 5(1) and section 94(1)(i)(vi) of the Occupational Safety and Health Act 2005 (OSHA) –, (ii) failed to notify the Director, Occupational Safety and Health of an accident by the quickest practicable means – breach of section 85(1)(a) and section 94(1)(i)(vi) of the OSHA –, and (iii) failed to send to the Director, Occupational Safety and Health within seven days, a report of that accident – breach of section 85(1)(b) and section 94(1)(i)(vi) of the OSHA. The Accused stands convicted under the three counts.

2. A hearing was held into the circumstances of the offences and it came to light that on 03 January 2022 one Vishan Gorayah, who was employed by the Accused as *Employé de Rayon* at Dreamprice Supermarket, Royal Road, Lallmatie, sustained traumatic low back ache when the goods lift in which he was loading products underwent a free fall and hit the bottom of the lift shaft on the ground floor. He was conveyed to hospital where he was admitted for 2 days. The injured person was then

given 1 month's medical leave. The work accident was not reported by the employer by the quickest practicable means, nor was a report sent to the Director, Occupational Safety and Health within seven days as required by law. The enquiry *inter alia* revealed that the employer had failed to cause the goods lift to be maintained by a competent person and to be examined by a registered machinery inspector at least once every 6 months. There was also no independent ropes or chains connected to the cage of the goods lift and no buffers at the bottom of the lift shaft.

3. The Accused's representative admitted the charges and fully co-operated with the investigators. He apologised on behalf of the company and stated that remedial measures have since been taken to ensure that no such accident happen again.

4. 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.*"

5. 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."

6. Section 85(1) of the OSHA further 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."

7. A reading of the Eleventh Schedule to the OSHA indicates that *"any [other] injury which results in the person injured being admitted into hospital for more than 24 hours"* is on the *"list of injuries requiring immediate notification."* By virtue of section 94(1)(i)(vi) of the OSHA, any person who contravenes a provision of the Act shall commit an offence. As employer, the Accused has rendered itself liable *"to a fine not exceeding 75,000 rupees and to imprisonment for a term not exceeding one year"* under each count, 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."* 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 the facts of this case as borne out in evidence, and summarised above. Through its omissions, the Accused has endangered the life of its employees. Furthermore, the Accused has failed to report the matter to the Ministry as required by law. I note that the Accused has a long list of previous convictions (**Document X**), including two cognate ones. The Accused has, however, entered an early guilty plea and tendered its apologies.

10. In view of all the foregoing circumstances, I sentence the Accused to pay a fine of Rs 5,000. under Count I, Rs 1,000. under Count II and Rs 1,000. under Count III of the information. The Accused shall also pay Rs 200. as costs.

04 June 2025

M. ARMOOGUM

Magistrate