

SHERIFFDOM OF GRAMPIAN, HIGHLAND AND ISLANDS AT TAIN

[2023] FAI 34

TAI-B44-23

DETERMINATION

BY

SHERIFF GARY AITKEN

UNDER THE INQUIRIES INTO FATAL ACCIDENTS AND SUDDEN DEATHS ETC
(SCOTLAND) ACT 2016

into the death of

GORDON INNES

TAIN, 28 August 2023

Determination

The sheriff, having considered the information presented at the inquiry, determines in terms of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016, (hereinafter referred to as “the 2016 Act”):

In terms of section 26(2)(a) of the 2016 Act (when and where the death occurred)

The late Gordon Innes, born 13 January 1964, died at approximately 12:20 hours on 12 April 2022 at the A9 Dunblane to Scrabster trunk road at a point thereon known as Skiach, by Alness, Ross-shire.

In terms of section 26(2)(b) of the 2016 Act (when and where any accident resulting in the death occurred)

The accident resulting in death took place at approximately 12:20 hours on 12 April 2022 at the A9 Dunblane to Scrabster trunk road at a point thereon known as Skiach, by Alness, Ross-shire.

In terms of section 26(2)(c) of the 2016 Act (the cause or causes of the death)

The cause of the death of said Gordon Innes was multiple injuries as a consequence of being the driver in a vehicular collision and cardiac enlargement.

In terms of section 26(2)(d) of the 2016 Act (the cause or causes of any accident resulting in the death)

The cause of the accident resulting in the death of said Gordon Innes was distraction or some other reason, which cannot be determined, by which said Gordon Innes failed to or was unable to react to the prevailing road and traffic conditions and he did not or could not prevent the lorry he was driving from colliding with the rear of a preceding lorry.

In terms of section 26(2)(e) of the 2016 Act (any precautions which (i) could reasonably have been taken and (ii) had they been taken, might realistically have resulted in death, or any accident resulting in death, being avoided)

Given that the precise mechanism of the accident which resulted in the lorry being driven by said Gordon Innes colliding with the preceding lorry is unknown it cannot be determined whether there are precautions which might realistically have resulted in that accident being avoided.

In terms of section 26(2)(f) of the 2016 Act (any defects in any system of working which contributed to the death or the accident resulting in death)

Given that the precise mechanism of the accident which resulted in the lorry being driven by said Gordon Innes colliding with the preceding lorry is unknown it cannot be determined that there were defects in any system of working which contributed to the death or the accident resulting in death.

In terms of section 26(2)(g) (any other facts which are relevant to the circumstances of the death)

There are no other facts relevant to the circumstances of the death of said Gordon Innes.

Recommendations

In terms of sections 26(1)(b) of the 2016 Act (recommendations (if any) as to (a) the taking of reasonable precautions, (b) the making of improvements to any system of working, (c) the introduction of a system of working, (d) the taking of any other steps, which might realistically prevent other deaths in similar circumstances)

There are no recommendations made.

NOTE

Legal Framework

[1] This inquiry was held in terms of section 1 of the 2016 Act and was governed by the Act of Sederunt (Fatal Accident Inquiry Rules) 2017 (hereinafter referred to as “the 2017 Rules”). This fatal accident inquiry was presented by the Crown as a mandatory

inquiry in terms of section 2 of the 2016 Act as Mr Innes died as a result of an accident in the course of his employment or occupation.

[2] The purpose of this inquiry is set out in section 3 of the 2016 Act as being to establish the circumstances of the death and to consider what steps, if any, might be taken to prevent other deaths in similar circumstances. It is not intended to establish liability, either criminal or civil. The inquiry is an exercise in fact finding, not fault finding. It is not open to me to engage in speculation. The inquiry is an inquisitorial process. The Crown, in the form of the Procurator Fiscal, represents the public interest.

[3] In terms of section 26 of the 2016 Act the inquiry must determine certain matters, namely where and when the death occurred, when any accident resulting in the death occurred, the cause or causes of the death, the cause or causes of any accident resulting in the death, any precautions which could reasonably have been taken and might realistically have avoided the death or any accident resulting in the death, any defects in any system of working which contributed to the death, and any other factors relevant to the circumstances of the death. It is open to the Sheriff to make recommendations in relation to matters set out in subsection 4 of section 1 of the 2016 Act.

Introduction

[4] This inquiry was held into the death of Gordon Innes. He was a 58 year old man who was employed as a heavy goods vehicle driver. He died on 12 April 2022 when a lorry he was driving in the course of his employment collided with the rear of a preceding lorry on the A9 road at Skiach, by Alness, Ross-shire.

[5] A preliminary hearing was held by Webex at Tain Sheriff Court on 5 July 2023.

It was clear that the evidence was not likely to be disputed and the Crown undertook to prepare a joint minute of agreement.

[6] The inquiry proceeded by Webex at Tain Sheriff Court on 14 August 2023.

Ms Sun, Procurator Fiscal Depute, represented the Crown. Ms McGready, solicitor, represented Mr Innes' employer, McDonald Scaffolding Services Ltd. No other parties were represented. Parties lodged a substantial joint minute of agreement. I accepted the facts set out in the joint minute of agreement. The findings in fact listed at paras [9] to [42] below are derived from the joint minute of agreement.

[7] The Crown also lodged an inventory of documentary productions as follows:

1. Post Mortem Report
2. Toxicological Report
3. Death Certificate
4. Medical Records – Gordon Innes
5. Timesheets – Gordon Innes
6. Tachograph data report – E16 MSS
7. Vehicle work records – E16 MSS
8. Job report sheets – E16 MSS
9. Brake Test Calibration Certificate
10. BEAR Scotland Site Plan and Traffic Order
11. Collision Investigation Report – Police Service of Scotland
12. Album of Photographs 1

13. Album of Photographs 2
14. Album of Photographs 3
15. Album of Photographs 4
16. Copy dashcam footage – E16 MSS
17. North West Scotland Trunk Roads 2022 No. 3 Order

[8] There being no dispute between parties as to the evidence the inquiry proceeded on the basis of the joint minute of agreement, which was read by Ms Sun.

The facts

[9] Gordon Innes (hereinafter referred to as “Mr Innes”) was aged 58 years, having been born on 13 January 1964 and formerly resided alone in Alness. He is survived by his parents, three siblings and two adult children.

[10] Mr Innes was, at the time of his death, employed by McDonald Scaffolding Services Ltd (hereinafter referred to as “McDonald Scaffolding”), Invergordon as an Heavy Goods Vehicle driver and had been since 2014. He held a full substantive driving licence and had held categories C and C+ E licences since December 1997. He is described by colleagues as having been an experienced goods vehicle driver.

[11] A category C + E license is the most comprehensive Heavy Goods Vehicle license a driver can hold. With this license drivers can drive a drawbar or articulated vehicle. The E part of the category C + E license stands for “**entitlement**” and means that the holder of such a license can drive vehicles up to or over 750kg in weight.

[12] Mr Innes was understood to be of reasonable health, however he was prescribed a course of medication for high blood pressure shortly, before his death.

[13] On 12 April 2022, at the time of his death, Mr Innes was driving a red DAF 3-axle rigid flatbed large goods vehicle, registration number E16MSS, hereinafter referred to as “the red DAF lorry”. The red DAF lorry was last inspected and serviced on 3 March 2022 by Norscot Truck & Van Ltd at Inverness and all applicable items were found to be serviceable.

[14] The locus of the collision in which Mr Innes died is the A9 Dunblane to Scrabster trunk road at a point thereon known as Skiach, by Alness, Ross-shire. It is a two-way undivided carriageway of hot rolled asphalt. It is governed by a 60-mph speed limit for motor cars. At the time of the collision there were temporary speed restrictions and temporary traffic lights at the locus due to road works being carried out by Bear Scotland.

[15] On 12 April 2022 the road was coned off to close a lane so the Bear Scotland vehicles could work safely within the closure. The traffic was controlled by a temporary traffic light. On the lead up to the road works there were low level roadwork signs first set at a mile. The signs were repeated at 800, 600, 400, 300, 200 and 100 yards. The 30 miles per hour speed limit signs were set at 250 yards. The single lane warning signs were set at 200 yards and then 100 yards. All these signs were clean and of the correct dimension.

[16] At the time of the collision, the weather was dry, clear, the visibility was good, the road was dry and the traffic flow was moderate.

[17] On 11 April 2022, the red DAF lorry was checked at the garage within the Macdonald Scaffolding grounds and the brake pads on the front axle were replaced by the company mechanics. Thereafter Mr Innes took the red DAF lorry to carry out a brake efficiency test, which was found to be in order.

[18] At 06.30 hours on 12 April 2022, Mr Innes left the Macdonald Scaffolding yard driving the red DAF lorry as planned, in order to deliver scaffolding to sites at Baird's Maltings, Inverness and at Foyers Power Station. Stuart Boyce, the yard supervisor, arrived for work at Macdonald Scaffolding Ltd around this time and saw Mr Innes driving the red DAF lorry out of the yard. They waved to each other as they passed.

[19] About 12.00 hours on 12 April 2022 Lorraine Watson left the Dingwall area driving her white Fiat Panda motor car to travel to Invergordon. She travelled onto the A9 road at the Ardullie roundabout to travel north towards Invergordon.

[20] At this time Fiona Schmerbitz was driving a blue Jaguar I-Pace motor car, north on the A9 road behind Lorraine Watson. Dominic James was also travelling north on the A9 road, behind Ms Schmerbitz. He was driving a white Hyundai i10 motor vehicle.

[21] Glen Fraser left Inverness to travel north on the A9 road heading for Invergordon driving a Scottish Ambulance patient transport vehicle. On passing the Easter Kinkell junction he came in behind Mr Innes' red DAF lorry also travelling north. Mr Innes' vehicle was being driven in a normal manner, giving Mr Fraser no concerns.

[22] About 12.20 hours George Anderson, who was driving a white Scania R500 logging lorry, emerged onto the A9 road from its junction with the B9176 road at Skiach, by Alness, Ross-shire and followed the white Hyundai i10 motor vehicle being driven by

Mr James, which was following the blue Jaguar I-Pace vehicle being driven by Ms Schmerbitz, which was following the white Fiat Panda vehicle being driven by the Ms Watson.

[23] Ms Watson approached the temporary traffic lights which she noted were at red. She brought her vehicle to a halt and on stopping applied its parking brake and selected a neutral gear. Ms Schmerbitz observed the red traffic lights and brought her vehicle to a halt. This was followed by Mr James who came to a stop and also applied the parking brake and a neutral gear.

[24] Mr Anderson followed in the queue behind Mr James and on coming to a stop felt significant bang as his vehicle was shunted forward from the rear. As a result of this his vehicle was shunted into the rear of Mr James' vehicle, which in turn was shunted into the rear of Ms Schmerbitz's vehicle which was likewise shunted into the rear of Ms Watsons' vehicle.

[25] Glen Fraser, who was still driving behind Mr Innes' red DAF lorry, reduced his speed on seeing the roadwork signs and recalled the red DAF lorry did not reduce its speed and seemed to maintain a constant speed of about 45 to 50 miles per hour.

Mr Fraser was aware that there was a queue of traffic ahead at the temporary traffic lights. Mr Fraser observed that there was no brake light activation prior to the red DAF lorry colliding with the rear of the Mr Anderson's Scania R500 logging lorry.

[26] All the occupants exited their respective vehicle where they observed the red DAF lorry which had clearly stained catastrophic intrusion to the driver's cab. It was clear that Mr Innes had sustained injuries which were not compatible with life.

[27] Mr Fraser contacted the emergency services.

[28] At this time two British Transport Police officers had been travelling south on the A9 road when they had been flagged down by a member of the public. They attended the scene of the collision and observed the debris across the roadway and asked for further police resources to attend.

[29] Doctor Claire Vincents, intensive care consultant from Raigmore Hospital, Inverness arrived at the scene at 12.51 hours and pronounced Mr Innes' life extinct at 13.10 hours on 12 April 2022.

[30] The occupants of the other vehicles were checked by ambulance staff and did not require hospital treatment.

[31] Crown Production number 16 - Copy Dashcam Footage - Vehicle E16MSS contains video footage from a dashcam system with a front mounted camera fitted to the red DAF lorry driven by Mr Innes. The footage contains a recording of the journey for approximately two and a half minutes prior to the collision. The journey can be viewed on the approach to the collision area where there are no proceeding vehicles in front of the red DAF lorry. As the red DAF lorry approached at scene of the collision where the temporary road works were located, the aforementioned Scania R500 lorry can be seen on the video footage merging from the north end of the Skiach junction, to join the A9 road and then continue north before braking to almost a complete stop in the traffic queue. As the red DAF lorry passes the temporary 30 miles per hour speed restriction, there does not appear to be any change in its speed.

[32] Mr Innes' body was conveyed to the Aberdeen Mortuary, and on 19 April 2022 was examined by Doctors Tamara McNamee and Leighanne Deboys, both Forensic Pathologists. They certified the causes of Mr Innes' death as being: 1a Multiple injuries; 1b Driver in vehicular collision and II Cardiac enlargement.

[33] Cardiac enlargement is judged to be a contributing factor to Mr Innes' death.

The pathologists state in their Post Mortem Report that:

“Individuals with cardiac enlargement are at risk of sudden death at any time due to a fatal cardiac arrhythmia or an ischaemic event such as a heart attack. We note the recent diagnosis of high blood pressure and this may be a recognised risk factor for the development of cardiac enlargement.”

[34] The pathologists could not state whether or not Mr Innes had a cardiac event prior to the collision.

[35] About 12.40 hours on 12 April 2022, Constables MacAulay and Macleod, both from Road Policing Unit, Police Service of Scotland, arrived at the scene of the collision where they observed the red DAF lorry with significant frontal damage. The cab was crushed so severely its state was not compatible with life for any person who had been within at the time of the collision. The officers observed Mr Innes to be within the cab and his body to be motionless. There were no sign of life and his injuries were not survivable.

[36] The officers observed that the red DAF lorry had collided with the rear of the Scania R500 logging lorry, from which a number of logs were distributed across the roadway.

[37] The road was closed and the scene preserved until the arrival of the Constables Ian Mathers and Lewis Macdonald, both from the said Road Policing Unit, who attended and took photographs of the scene and carried out a detailed forensic collision investigation. The findings of their investigations are contained in Crown production number 11 - Road Policing Collision Investigation Report.

[38] The red DAF lorry and the Scania R500 logging lorry were thereafter seized and recovered to Sheriff Mill, Elgin and the rest of the vehicles involved were recovered to Bannermans of Tain.

[39] On 25 April 2022 at the Sheriff Mill Motor Company Ltd premises, Elgin, at the request of the Police Service of Scotland and in the presence of two police officers, Henry Mackie, Vehicle Examiner, examined the red DAF lorry and the Scania R500 logging lorry. No defects were found on the Scania R500 logging lorry or its trailer which would have contributed to the collision. A full examination of the red DAF lorry was not possible due to the catastrophic damages caused by the collision. A visual examination was carried out and no defects were found which would have contributed to the collision.

[40] A copy of the data from the tachograph fitted to the red DAF lorry tachograph which contained the driving record of Mr Innes from 7 March 2022 to 4 April 2022 was obtained on 21 April 2022 from Macdonald Scaffolding. It was reviewed by Constable Mathers and found to be in order with no driving abnormalities.

[41] The Police Service of Scotland Collision Investigation Report prepared by Constables Mathers and MacLeod concludes that Mr Innes had been distracted and/or

unable to react either to the roadworks, or to the Scania R500 logging lorry in front of him slowing down. The reason for Mr Innes being distracted and/or unable to react cannot be determined. There was no indication Mr Innes changed his speed (either deceleration or acceleration) prior to the collision. It is estimated the red DAF lorry was travelling at 54 miles per hour immediately prior to impact. There was no indication Mr Innes veered or was drifting across the carriageway.

The evidence

[42] Ms Sun intimated that all the evidence to be presented at the inquiry was contained within the joint minute of agreement, which she read out. The salient facts from the joint minute of agreement are noted above and the principal joint minute of agreement is lodged with the inquiry papers. Ms McGready confirmed that she had no additional evidence to lead on behalf of McDonald Scaffolding Services Ltd.

Crown Submissions

[43] Ms Sun very helpfully lodged written submissions on behalf of the Crown. She made formal submissions in relation to when and where Mr Innes' death and the accident resulting in his death occurred, based on the evidence contained in the joint minute of agreement. Likewise, she made formal submissions in relation to the cause of Mr Innes' death, in accordance with the findings of the pathologists, at autopsy. Ms Sun very properly submitted that as the underlying cause of Mr Innes' accident is unknown and cannot be determined she was not in a position to suggest reasonable precautions in

terms of section 26(2)(e) of the 2016 Act. Ms Sun made no submissions in relation to sections 26(2)(f) and(g) of the 2016 Act.

[44] Ms Sun went on to express, on behalf of the Crown, her condolences to Mr Innes' family and friends, noting that it was clear that Mr Innes' life had been cut short in tragic circumstances.

Submissions on behalf of McDonald Scaffolding Services Ltd

[45] On behalf of McDonald Scaffolding Services Ltd, Ms McGready concurred with and in large part adopted the Crown submissions. That appeared to me to be an entirely proper approach to take. She submitted that in light of the evidence I would be entitled to conclude that in terms of section 26(2)(f) of the 2016 Act there were no defects in any system of working which contributed to Mr Innes' death or the accident resulting in his death. I concur with that assessment of the evidence.

[46] Ms McGready also took the opportunity to extend her own and her client's condolences to Mr Innes' family and friends.

Discussion and Conclusions

[47] It is very clear from the evidence presented to the inquiry *what* happened which resulted in Mr Innes' untimely death. The red DAF lorry he was driving collided with the preceding Scania R500 logging lorry with catastrophic and instantly fatal consequences for Mr Innes. It is clear from the evidence that the red DAF lorry did not brake prior to the collision and there was no alteration in its speed, either by accelerating

or decelerating. No avoiding action was taken. Mr Innes appears not to have reacted to the presence of the various road works warning signs now the stationary queue of traffic in front of him.

[48] However, there is no evidence as to *why* the accident happened. Sadly it remains unknown and unknowable why Mr Innes did not react and bring the red DAF lorry to a halt prior to the collision. He may have been distracted for some unknown reason. He may have suffered some medical event, of unknown seriousness. It is neither helpful nor permissible for me to engage in speculation as to the cause of the accident. As Ms Sun and Ms McGready both submitted, where the cause of the accident cannot be determined, despite significant efforts by investigators, it is not possible to establish any reasonable precautions. Nor is it possible to make recommendations for the future.

[49] In those circumstances I am constrained to make the formal findings required by the 2016 Act. I concur with the submissions made by Ms Sun and endorsed by Ms McGready and I largely adopt the Crown submissions in relation to my findings under section 26(2) of the 2016 Act, as set out above.

[50] In closing this Determination, may I join with Ms Sun and Ms McGready in expressing my condolences to the family and friends of Mr Innes. His death is a tragedy which is no doubt still very keenly felt.