

SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT PERTH

2015 FAI 30

B122/15

DETERMINATION

BY

SHERIFF C M SHEAD, ADVOCATE

**UNDER THE FATAL ACCIDENTS AND SUDDEN DEATHS INQUIRIES (SCOTLAND)
ACT 1976**

into the death of

OWEN PETER BISSETT

The sheriff, having considered the evidence adduced, Determines in terms of section 6(1) of the Fatal Accident and Sudden Deaths (Scotland) Act 1976:

- a) That the late Owen Peter Bissett died at Ninewells Hospital in Dundee on 26 November 2014 at 13:18 having been fatally injured in a road traffic accident. The accident occurred on 20 November 2014 at approximately 09:08 on the A85 Crieff to Perth road at McAinsh Cottage, Abercairnie.
- b) That the cause of death was cranio-cerebral injuries and associated complications caused by blunt trauma.
- c) That there were no reasonable precautions whereby the death might have been avoided
- d) That there was no defect in any system of working which contributed to his death
- e) That other facts relevant to the circumstances of the death are set out in the findings which follow.

Findings in fact

1. The deceased sustained fatal injuries in a collision between the car he was driving and a lorry being driven by Mr David Scott. That collision occurred on the A85 Crieff to Perth road at McAinsh Cottage, Abercairnie on 20 November 2014 at approximately 09:08.
2. At the time the deceased was employed by MGT Training as an assessor. The company operates a system of flexible hours for its employees. The deceased worked from home and was required to travel throughout Tayside and Fife in connection with his employment. Employees are entitled to claim travelling expenses in connection with journeys by car. The deceased logged on to his employers' computer system at 07:54 that day which was permitted within the flexible hours he was entitled to work. He was entitled to be paid from that time.
3. He left home driving his own car. He was travelling to Crieff to meet a colleague at the time of the accident. He was driving in the course of his employment when the accident happened.
4. The collision occurred as a result of the deceased losing control of his car which was travelling on the wrong side of the road at the time. The reason for that loss of control is unknown.
5. He was taken to Ninewells Hospital in Dundee for treatment but was pronounced dead by Doctor Sally Crofts at 13:18 on 26 November 2014.
6. On the instructions of the Procurator Fiscal at Dundee a post-mortem examination was carried out on 28 November 2014. That examination established that the cause of death was cranio-cerebral injuries (injuries to the head and brain) and associated complications brought about by the blunt force trauma which the deceased had sustained in the collision.

A summary of the main points of the evidence

The Crown led evidence from three witnesses including Mr David Scott the driver of the other vehicle and lodged a joint minute which the parties had helpfully agreed.

I need not summarise the evidence of the first witness, Patricia Middleton, who was a representative of the deceased's employer beyond noting that her evidence provided the principal basis on which to conclude that the accident occurred in the course of the deceased's employment.

Mr Scott explained that he had been driving in the course of his employment as an HGV driver. He had carried out safety checks on his vehicle before leaving Edinburgh that morning.

He recalled seeing the deceased's vehicle travelling towards him, side on and on his side of the road. The vehicles collided. Mr Scott managed to kick open the door of his van. He went to signal to other drivers to alert them to the accident. He sustained injuries which he described as minor.

The last witness was PC Frank Donald. Together with a colleague he had visited the locus arriving at about 11:40, conducted the appropriate investigations and produced a report. That report was Crown Production 1 to which he was referred. He was taken to various parts of the report including his conclusions.

In summary it could not be ascertained what had caused the deceased to lose control of his car although some possibilities were considered. On examining the deceased's car it was found that one of the rear tyres was defective. In the opinion of the officer the condition of the tyre may have been a contributing factor in the deceased losing control of his car.

In [10] of the joint minute it is recorded that an examination had been undertaken by Mr Martin Bell of the vehicle which had been driven by Mr Scott. Mr Bell found no defects in either the vehicle or the trailer which could have contributed to the collision.

The submissions

The Procurator Fiscal asked me to make formal findings only as required by section 6(1) (a) and (b) of the 1976 Act. The solicitor for Mr Scott adopted that submission but added that, under section 6(1) (b), the court might be prepared to find that the cause of the accident was error on the part of the deceased.

Having considered that submission I declined to make such a finding because in my view the evidence did not establish what had caused the car to be on the wrong side of the road at the critical time.

Conclusion

I should like to express my condolences to the family and friends of Mr Bissett and record my view that there is no basis for criticising the actions of Mr Scott or the manner of his driving when the accident occurred.

Sheriff of Tayside, Central and Fife

Perth 12 November 2015