

Sheriffdom of Tayside Central and Fife at Dundee

DETERMINATION
by
Sheriff George Alexander Way

in relation to the Inquiry under section 1(1)(a) and (b) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 into the circumstances of the death of **Mr. Gavin McCabe** (born 31st of May 1967) and latterly residing at 83 Princes Street Perth.

Dundee 2ND November 2010

THE SHERIFF having considered all evidence adduced DETERMINES as follows,

In terms of Section 6(1)(a) of the Act of 1976:

(One) that Mr Gavin McCabe, born 31st of May 1967 and latterly residing at 83 Princes Street Perth died at 17.20 hours on 21st of March 2009 at Ninewells Hospital Dundee. That Mr McCabe died as a consequence of injuries sustained when a motor vehicle driven by him was in a collision with a BMW motor vehicle registration mark HN58 SVE driven by Halim Cholmeley.

(Two) That the said motor vehicle collision occurred on 15th of March 2009 on the A90 Kingsway West Dundee at the roundabout junction with Myreside Road Dundee.

(Three) That Mr McCabe was driving, in the course of his employment as a taxi driver, a Skoda Superb registration mark SH04 XHC as a licensed private hire taxi at the time of the said motor vehicle collision.

In terms of section 6(1)(b) :

(Four) That the cause of Mr McCabe's death was multiple injuries sustained by him as a result of the said collision including blunt force trauma when he was ejected from the vehicle and hit the road.

In terms of section 6(1)(c) :

(Five) Mr.McCabe was not wearing a seatbelt at the time of the collision.

(Six) A reasonable precaution for his own safety would have been for Mr.McCabe to have worn a seatbelt. It cannot however be said what, if any, specific injuries Mr McCabe had sustained prior to being ejected from the vehicle. Further, it cannot be said with certainty, that the wearing of a seatbelt would have saved Mr McCabe's life but had he been wearing a seatbelt the death might have been avoided.

In terms of section 6(1)(d) :

(Seven) There were no defects in the system of working

In terms of section 6(1)(e):

(Eight) The exemption from the compulsory use of seatbelts by taxi drivers is contained in regulation 6(1)(g) of the **Motor Vehicles (wearing of seatbelts) Regulations 1993** (SI 1993 /176) which is in the following terms: –

“ the requirements of regulation five do not apply to –

(g) the driver of a licensed taxi while it is being used for seeking higher, or and single call for higher or carrying a passenger for higher or a private hire a vehicle while it is being used to carry a passenger for hire.

Enquiries with the Department of transport produced the following response:

“the exemption was provided following representations made by the taxi trade who are concerned about the safety of drivers who have to carry strangers and and risk of attack and robbery. It was last formally reviewed in 1992 when a decision was taken to maintain the exemption in the extant 1993 Regulations.”

The Procurator Fiscal Depute produced a copy of Hansard for the House of Lords debate upon the first seat belt regulations (the predecessor of the 1993 regulations- dated 30th of July 1982) which variously addresses the rationale for the exemption in speeches by Lord Delwyn, Lord Underhill, Lord Nugent and again by Lord Delwyn responding to the debate. Perusal of the House of Commons Hansard Written Answers for 30th of January 2007 produced the following exchange:

Mr Laurence Robertson MP: *to ask the Secretary of State for Transport what factors were taken into account when deciding to exempt taxi drivers and drivers of private hire vehicles from the requirement to wear a seatbelt ?*

Answer : *the exemption has been available since 1983 because of the risks that these drivers face from those that may assault or seek to rob them.*

The Submissions for the Crown

1. The time and place of the fatal accident was agreed to be uncontroversial and had been evidentially dealt with in the Minute of Admissions for the parties (number 29 of process); intimation of death form (number 9 of process) and Post-Mortem examination Report and Autopsy Report (numbers 10 and 11 of process) I also heard evidence from Police Officers who attended at the scene shortly after the vehicle collision.

2. The cause of death was vouched by the said Minute of Admissions for the parties, the post mortem examination and autopsy reports.

3. In so far as reasonable precautions are concerned, it was accepted that the test is not whether or not there is a reasonable precaution whereby the death or accident resulting in death, *would* have been avoided but only where it *might* have been avoided. What is envisaged by the Act is a real or likely possibility rather than a probability, that the death might have been avoided by taking a reasonable precaution. Reference was made to Carmichael: Sudden Deaths and Fatal Accident Enquiries (Third edition) paragraphs 5-75. Evidentially, the enquiry heard evidence from Constable Gordon Britton, Tayside police crash investigator who was firmly of the view that if Mr McCabe had been wearing a seatbelt it was more than likely that he would have survived the collision. The passenger in the taxi who was wearing a seatbelt did indeed survive the collision.

4. The failure to wear a seat belt was not a defect in the system of working as it has statutory sanction as this time.

5. Factors relevant to the circumstances of Gavin McCabe's death. The Procurator Fiscal Depute submitted that the Enquiry should recommend that the terms of Regulation 6(g) of the **Motor Vehicles (wearing of seatbelts) Regulations** 1993

should be revisited by the appropriate government authority to reconsider the *rationale* underlying the exemption, in its entirety, or at least to reconsider the terms and extent of the exemption as presently drafted.

The Procurator Fiscal argued that his submission was based upon the premise that the relevant authorities consider that wearing a seatbelt saves lives rather than cost lives. This is a premise which has clearly been accepted by successive governments standing the existence and periodic review of the seatbelt legislation. In light of this the learned Depute challenged the existence of any exemption from the compulsory wearing of seatbelts which cannot be demonstrated as necessary in the best interests of driver or passenger safety. The circumstances surrounding the death of Mr McCabe and indeed the death of another local taxi driver Mr Malcolm Dowds considered by Sheriff Evans at Cupar in a Determination dated 18 January 2008 brings the issue of the taxi driver exemption into sharp focus. Two taxi drivers, in the course of their employment legitimately exercising their right, in terms of the exemption, not to wear seatbelt have died after being involved in an accident during the course of which both were thrown from their vehicles. In the event that they had been wearing a seatbelt they would likely not been ejected from the vehicle and thereby improved their prospects of survival. The learned Depute drew the courts attention to what appear to be a number of anomalies: –

- (a) if the rationale for the exemption is driver safety from assault and robbery by a passenger or passengers and then why is a taxi driver exempt while the taxi is being used merely for seeking hire or answering a call from hire since he or she does not have a passenger in the vehicle who is capable of assaulting or robbing him or her?
- (b) if a taxi driver is exempt when carrying one passenger in the front passenger seat and that passenger will be wearing a seatbelt, how, in those circumstances, does not wearing a seatbelt by the driver provide him with any more protection from assault or robbery than if he were wearing a seatbelt. These were the very circumstances pertaining to Mr McCabe.
- (c) Why is the driver of a Hackney or any other purpose built taxi exempt since all modern designs of such vehicles have enclosed drivers cabs and doors which lock from the drivers control unit? The drivers are therefore fully protected from any assault?.
- (d) Is it not possible to adapt to a saloon car when working as a private hire vehicle (i.e. not purpose built as a taxi cab) to provide some kind of

demountable grill or screen between the driver and the rear-seat passengers to provide protection against assault or robbery? An example of such a grill already in use are those used to screen off the rear storage areas of estate cars to prevent dogs or other hazards from interfering with the driver.

- (e) If the answer to (d) is in the affirmative then can the taxi licensing authorities make a condition of granting any such license that suitable demountable grill be fixed within the vehicle during use as a taxi ?

RECOMMENDATIONS

I accept the submissions of the Procurator Fiscal Depute to this Enquiry. I can see no reason why taxi drivers should be exempt from the seat belt regulations. This is particularly clear when one considers that the exemption applies even to specially designed taxi vehicles. All such vehicles now have fully isolated drivers' cabs which protect them from any risk of assault or robbery. Private hire vehicles could have safety screens fitted, if this were necessary to protect the drivers, and so reduce those risks which the present exemption is said to be designed to combat. In any event driver of private hire vehicles cannot be at risk of assault if there is no one in the rear of their vehicle. The risk to the health and safety of both drivers and passengers which these regulations engender is, in my judgment, wholly disproportionate to the perceived risks to drivers of physical abuse and the like from passengers. In my judgment the exemption fosters an attitude of mind amongst taxi drivers that it is their professional "right" to be exempt and acceptance of this blinds them to their own health and safety. In terms of the present exemption a taxi driver could drive from Dundee to Edinburgh, perhaps in poor weather on busy roads, without wearing a seatbelt with nothing more dangerous to them in the back than an urgent medical delivery from Ninewells Hospital to the Royal Infirmary. Mr.McCabe was driving in a perfectly safe manner when his vehicle was struck by a driver who entered a roundabout without care at excessive speeds apparently bent upon suicide. Taxi drivers encounter as many unforeseen hazards on the roads as any other road user.

I recommend that the Scottish Ministers and the Secretary of State for Transport urgently review the current regulations with a view to rescinding the present exemption from wearing seat belts as applicable to taxi drivers either it it's entirety or at least to amend it so that it no longer applies to Hackney or other specially built taxi cabs or to Private Hire Vehicles when they have no passengers in the rear seats.

SHERIFF George Alexander Way