

SHERIFFDOM OF GRAMPIAN, HIGHLAND AND ISLANDS AT INVERNESS

**UNDER THE FATAL ACCIDENTS AND SUDDEN DEATHS INQUIRY
(SCOTLAND) ACT 1976
SECTION 6(1)(a)**

Case Ref:

DETERMINATION

into the circumstances of the death of

ALEXANDER WARDEN

born 5th June 1944

and formerly residing at

8 Gallowden Avenue, Arbroath

by

Ian R Abercrombie, QC

Sheriff of Grampian, Highland and Islands at

Inverness

on

19th March 2009

APPEARANCES:-

Mr. G. G. Aitken – Procurator Fiscal

Mr. A. C. G. Docwra – representing Mr. Brown

Mr. J. A. Varney – representing Harbro Limited, the deceased's employers

INVERNESS, 19th March 2009

1. The deceased died at 12:18 hours on Thursday 3rd July 2008 on an embankment adjacent to the A9 road at the start of the south-bound overtaking lane on the Nuide Straight by Kingussie (Survey map reference number 35;732984). The deceased died in the cab of the tractor unit of an articulated large goods vehicle registration number S451 BNU which he had been driving.

2. The accident occurred at 11:15 hours on Thursday 3rd July 2008 in the south-bound lane of the A9 road, about 40 metres from the start of the south-bound overtaking lane, on the Nuide Straight by Kingussie.

3. The cause of the deceased's death was the multiple injuries he sustained in the accident. In particular he sustained a depressed skull fracture to the parietal region associated with both subdural and subarachnoid haemorrhage with damage to the underlying brain tissue. The main artery leaving his heart had a tear, with haemorrhage into the mediastinum and right lung.

4. The accident resulting in the deceased's death was caused by a collision between the deceased's vehicle and a Mercedes 815 rigid curtain-side goods vehicle (7 ½ ton gross weight) registration number DK05 ETD driven by Mr James Brown, 171 Mennoch Road, Glasgow. At the material time the deceased's vehicle was moving from the northbound carriageway back into the southbound carriageway following his overtaking an artic goods vehicle registration number DK07 MTV driven by Dominic Charles Booth of 85 Robertson Way, Livingston, West Lothian. Mr Brown's vehicle moved from the northbound carriageway into the southbound carriageway at the same time as Mr Warden's vehicle was returning to the southbound carriageway.

5. There are no reasonable precautions whereby Mr Warden's death and the accident resulting in his death might have been avoided apart from the avoidance of the accident itself. This could have been achieved by the deceased, Mr Booth and Mr Brown driving with greater care and attention at the material time (See paragraph 7 below).

6. There were no defects in any system of working which contributed to Mr Warden's death or of the accident resulting in his death.

7. On the evidence led before me the other facts relevant to the circumstances of Mr Warden's death are as follows:-

(1) Immediately prior to the accident Mr Warden and Mr Booth were driving at speeds in excess of the speed limit applicable to their vehicles of 40 m.p.h. Mr Warden was driving at about 56 m.p.h. Mr Booth was driving at about 49 m.p.h.

(2) Mr Warden continued overtaking Mr Booth's vehicle when it must have been clearly obvious to him that there were oncoming vehicles. The weather and road conditions were good. It was a clear day.

(3) Mr Warden continued his overtaking manoeuvre although he was approaching an arrow on the road surface indicating that vehicles should return to the southbound carriageway. This arrow was located shortly before solid double white lines in the centre of the road. At least the offside wheels of Mr Warden's vehicle transversed the start of the overtaking lane and crossed over and, for a period, straddled the solid white lines.

(4) Mr Warden did not, when the oncoming traffic became visible to him, slow down and return to the southbound carriageway. This could have been done as both vehicles proceeding immediately behind him, driven by Linda Cunningham, 20 Newtongate, Nairn and Ian Murdoch, 1 Primrose Court, Broxburn, West Lothian, were aware of the difficulties posed by the oncoming vehicles and had slowed down their vehicles.

(5) Mr Booth did not slow down to allow Mr Warden to complete his overtaking manoeuvre. He had set the cruise control of his vehicle. It was not disengaged until he applied his brakes. He had a good view of the road ahead, he was aware of the oncoming traffic and the fact that Mr Warden was overtaking him. He applied his brakes "hard" at the last minute when the collision was almost unavoidable.

(6) When Mr Brown became aware of the caravan in front of him braking, he lost control of his vehicle with the result that it crossed over the central line into

the southbound carriageway. The movement of Mr Brown's vehicle is shown very clearly on the CTTV footage produced.

(7) The deceased was not wearing a seatbelt at the material time. On the evidence before me relating to the nature of the impact and the resulting damage to his cab, had Mr Warden been wearing a seatbelt it would have made no difference to the injuries he sustained.

Note

[1] Mr Docwra initially invited me to determine that the accident "comprised a collision" between the deceased's lorry and the lorry driven by Mr James Brown. He later invited me in the course of his submission to find, in effect, that Mr Brown's driving at the material time could not be faulted.

[2] Mr Docwra relied on evidence from Mr Ferguson of 15 Ethibeton Terrace, Monifieth, who was driving his car and caravan registration number WR544 in front of Mr Brown's vehicle, to the effect that Mr Brown was driving at about the speed limit and also evidence from Mr Grant, Standfast Lodge, Leetown, Glencarse, Perth, who was driving his black BMW behind Mr Brown. If I was required to do so I would accept the submission as to speed, particularly because it is corroborated by the tachograph analysis taken from Mr Brown's vehicle. I would have had more difficulty, however, in accepting the evidence from Mr Grant, who in all other respects was credible and reliable, because I do not think he would be in a position to judge with accuracy the distance Mr Brown was travelling behind the caravan. The same comments apply to the CTTV footage which Constable McBean said was difficult to rely upon when assessing the actual vehicle travelling distances behind the caravan.

[3] Various reasons were canvassed in the evidence as to why Mr Brown lost control of his vehicle which then veered to the right and crossed into the oncoming carriageway. These reasons *inter alia* range from an involuntary skid, to failure of the ABS, to Mr Brown's view being obstructed by the caravan, to his driving too close to the caravan, to his steering to the offside momentarily before he applied the brakes, to the length and timing of the braking manoeuvre of the car and caravan in front of him and to his panicking and reacting inappropriately to the horrific situation which was developing immediately in front of him.

[4] It is unfortunate that Mr Brown was not able to give evidence to the inquiry. I was told that as he was severely injured in the collision he has no recollection of it whatsoever. He is continuing to suffer from his injuries. This is also regrettable because the witnesses at this inquiry benefited from a decision taken by the Procurator Fiscal not to institute criminal proceedings as a result of any persons driving at the material time. This enabled the evidence to be given before me with unusual candour and undoubtedly assisted the inquiry in reaching its determination.

[5] However I agree with the submissions made by both the Procurator Fiscal and Mr Varney that it is inappropriate and unnecessary for the inquiry to explore in more detail than has already been done in the determination the precise reasons why Mr Brown lost control of his vehicle. These are issues which will no doubt arise in future proceedings before the court. I indicated at the start of the inquiry, under reference in the dicta of Lord President Hope in Black v. Scott Lithgow 1990 SLT 612 at page 615 that it is not part of my function today to explore questions of fault or blame, nor is it the purpose of this inquiry to anticipate, let alone to deal with detailed issues of causation which arise from this tragic accident. I have only dealt with the matter to the extent I have in deference to the full arguments presented to me by Mr Docwra.

[6] Finally I was not invited by any party in the closing submissions to find that the accident was partially caused by Mr Ferguson. This was despite the evidence given by

Constable McBean, the police expert, in paragraph 9.26 of the Accident Report No. 3. If I had been invited to make such a finding I would not have been prepared to do so on the basis that Mr Ferguson's evidence to the effect that he "very possibly" slowed down, moved to the left of the northbound carriageway and braked, was both credible and reliable. His evidence was supported in all material respects by Mr Grant who was most fortunate himself to escape injury or death.

There are three matters I am now going to deal with which will not be part of the formal judgement. First, steps will now be taken to have Findings given in open court today recorded in writing. The Findings will be made available as soon as possible. Second, it is all too easy at these inquiries to lose sight of the human tragedy which has caused the inquiry to take place in the first place. I would like to record the court's sympathy, not only to the family of the deceased, but the family of all those people who have been affected by this tragic accident. Lastly I wish to place on record my thanks to the Procurator Fiscal, Mr Docwra and to Mr Varney for their very helpful assistance given to the court in the course of this inquiry and for the professional and competent way in which the evidence has been led and the submissions prepared.