

SHERIFFDOM OF GRAMPIAN, HIGHLAND AND ISLANDS AT WICK

[2016] FAI 6

B59/15

DETERMINATION

BY

SHERIFF ANDREW BERRY, ESQ

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

into the death of

WILLIAM ALEXANDER BRUCE CORMACK

Wick, 2 March 2016.

The Sheriff, having heard evidence and having resumed consideration of the cause,
finds and determines that:

1. In terms of section 6(1)(a) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 ("the Act") following upon a road traffic accident on 18th September 2014 on the A99 at Berriedale Braes, Caithness, William Alexander Bruce Cormack (born 24.10.1972) sustained injuries from which he died around 00.05 hours on 19th September 2014.
2. In terms of section 6(1)(b) of the Act the cause of death was:-
 - (a) crush asphyxia as a consequence of,
 - (b) a motor vehicle collision.

3. In terms of section 6(1)(c) of the Act there were no reasonable precautions whereby the accident resulting in the death might have been avoided.
4. In terms of section 6(1)(d) of the Act there were no defects in a system of working which contributed to the accident resulting in the death.
5. In terms of section 6(1)(e) of the Act I have no observation or recommendation to make.

[1] This Inquiry took place in the Sheriff Court at Wick when the crown were represented by David Barclay, procurator fiscal, and the partnership of Cormack and Sons, t/a Cormack Transport were represented by Mr Thomson, solicitor. The deceased was a partner in this firm and, with other duties, drove HGV vehicles.

[2] On 18th September 2014, in the course of his employment, the deceased William Alexander Bruce Cormack, and known as "Bruce", was driving a motor lorry north on the A9 near to the village of Berriedale, Caithness. The vehicle was a rigid DAF lorry with the registration T736 ASW.

[3] The A9 is a busy trunk road which, for the purposes of this matter, connects Inverness with Thurso on the far north coast of Scotland. A few miles south of Berriedale is the coastal village of Helmsdale through which the A9 passes before rising from sea level to a height of around 800 feet and then descending into Berriedale which again is at sea level.

[4] The road to the immediate north and south of Berriedale is known as Berriedale Braes.

[5] The first part of the Berriedale Braes, when heading north, comprises of an extremely steep descent. Near to the bottom of the descent there is a left hand bend leading to a bridge which can be described as marking the lowest point of the Berriedale Braes.

[6] It can readily be said that the descent and then ascent of the Berriedale Braes, whether travelling north or south, marks a truly exceptional stretch of roadway requiring great care to be exercised by any driver of any vehicle. It is not for the faint hearted. I think that it can readily be said that this stretch of road is, of itself, inherently dangerous.

[7] Mr Cormack's vehicle failed to safely manoeuvre the left hand bend already mentioned and overturned, coming to rest on the opposite carriageway. Some of the load the vehicle was carrying was shed onto the roadway.

[8] Earlier in the day Mr Cormack had driven south in respect of his work duties and it was on the return journey from Invergordon that the accident occurred.

[9] In the course of the day he had contact with three people either by meeting or in telephone conversation viz Ross Sutherland Bremner, Gary Miller and Christopher MacDonald. All are experienced HGV drivers and clearly had the highest regard for Mr Cormack. Each gave evidence and in the order that they had seen or spoken to Mr Cormack.

[10] Ross Bremner was a workmate of Mr Cormack and had been with the company for many years. He had met Mr Cormack at the car park of a road side restaurant on the

A9 near Dornoch when he found that everything was in order with Mr Cormack and his vehicle.

[11] Gary Miller had known Bruce Cormack since around 1980. Mr Miller ate with him on the 18th and no concern was mentioned by Mr Cormack about his vehicle or its load.

[12] Christopher MacDonald had also known Bruce Cormack for many years. They had two mobile telephone conversations on the 18th but had been cut off. The latter call was around 22.44 and the witness was aware that his friend had stopped at Helmsdale to get out of his vehicle to check his load. Mr Cormack did not mention any issues or concerns in relation to his vehicle.

[13] Each of these witnesses spoke quietly and with care indicating a theme of decent people going about their daily business in a relatively small community of drivers.

[14] I have been able to conclude on the evidence of these witnesses that Mr Cormack had no concerns about his vehicle or the load it was carrying. Similarly, from the evidence of these witnesses, there can be no doubt that the deceased would not have driven his vehicle at all had he been concerned about it in any way.

[15] The accident was not witnessed by anyone but it would appear that it occurred a few minutes after 23.00.

[16] Shortly thereafter three people came upon the scene viz Katrina Magee, Liam Brinded and Graeme James Williamson. Each was driving south on the A9 when, in turn, they descended into Berriedale. Each gave evidence and in the order that they had arrived at the scene.

[17] Katrina Magee upon realising what had happened spoke to the person in the cab of the vehicle and had the immediate presence of mind to run to a spot in this very isolated area where she could find a signal for her mobile phone. She called the emergency services and returned to the vehicle and had some further conversation with Mr Cormack.

[18] Liam Brinded was with a colleague when he came upon the scene of the accident. He also tried to communicate with Mr Cormack and when officers from the fire service arrived they asked him to keep talking to him, which he did.

[19] Graeme James Williamson is an ambulance paramedic educator. On viewing the scene he immediately set about doing what he could to help. Mr Williamson detected no vital signs and pronounced life extinct. This was a few minutes after midnight into the morning of 19th September 2014.

[20] It may be of some comfort to Mr Cormack's family and friends that the deceased was aided by three strangers who, individually and collectively, did what they could to offer help and comfort in trying circumstances. These witnesses are to be commended for doing what decent people do in times of emergency.

[21] Two witnesses, Ian Brown and George Scott Lemon, gave evidence of what might be described as a technical nature both having prepared reports based on their examination and findings.

[22] Ian Brown was, at the time, a vehicle examiner of many years standing with the Driver and Vehicle Standards Agency (VOSA). The witness was asked to assist by the Police Scotland Road Policing Unit based at Dingwall. He spoke to the terms of a report

that he had prepared. In particular he examined the area of the accident and the brakes and suspension of Mr Cormack's vehicle. The inspection was clearly thorough and took place upon his arrival at the scene and over a number of subsequent days.

[23] From his investigation he found that the condition of the vehicle was reasonably good but there were issues with the brakes. In short, he found that three of the six brakes on the vehicle were inoperative at the time of the incident. One was inoperative due to a mechanical failure and the others due to an ABS modulator valve failure. Taken together he concluded that this would have severely reduced braking effort and could have contributed to this incident.

[24] Critically, Mr Brown concluded that all three deficient parts of the braking system could have been working at the top of the Berriedale Braes as Mr Cormack began his descent.

[25] Further this witness stated that he knew Bruce Cormack and felt that he would not have gone on the road if there had been a defect in the vehicle of which he was aware. This is of course entirely in keeping with the views of those witnesses who spoke to Mr Cormack earlier in the day.

[26] George Scott Lemon is a police officer with the Divisional Road Policing Unit based at Dingwall. For the last 15 years he has been a collision investigator. He also spoke to the terms of the report that he had prepared. This was based on his investigation following upon attending at the scene supplemented by later examination of the vehicle's tachograph chart and access to the information provided by the various witnesses. He also had access to the conclusions of Ian Brown.

[27] PC Lemon was able to confirm that Mr Cormack had indeed driven north on the A9 from Invergordon and had stopped briefly at Helmsdale where the deceased left his cab and checked his load security. This stop, spoken to by the witness MacDonald, was confirmed by the tachograph chart. This record also allowed the officer to note that Mr Cormack, on his journey, would have had to have used his brakes on numerous occasions due to the nature of the road and the presence of roundabouts and steep downhill sections. The officer felt that the records showed that this was a "routine trip".

[28] In keeping with the evidence of Mr Brown PC Lemon could not say when the brakes had become defective and the problem may have arisen on the Berriedale Braes. In short he found nothing to suggest that Mr Cormack was driving a vehicle that he believed was defective in any way.

[29] I heard further evidence from two members of the deceased's family viz his brothers James and Stuart. Along with their brother they had been involved over many years in what is a family business. All three brothers had filled various roles in the business over many years. James and Stuart spoke with confidence that Bruce would not have embarked on, or continued, his journey if he had had the slightest concern about the safety of his vehicle in relation to the brakes or otherwise. That is clearly confirmed by those other witnesses I have previously referred to.

[30] The company have taken a number of steps to enhance the in-house servicing and repair of the company's fleet of vehicles. It is clear to me that safety is a matter taken seriously by all those engaged in the business. Further, there is nothing to suggest this tragic event could have been foreseen.

[31] These then are the background facts that led to the death of Bruce Cormack in the first few minutes of 19th September 2014 on the A9 at Berriedale Braes. From the evidence it is clear that the deceased was nearing journey's end when his vehicle overturned on a left hand bend which it had been unable to negotiate. It is clear to me that the brakes were not an issue before Mr Cormack stopped at Helmsdale, checked his load and set off again. I am satisfied from several sources that he had no concern about his vehicle and if he had he would not have driven on. He was an experienced driver who knew the road and its challenging features very well.

[32] That Mr Cormack did not use the escape lane a short distance before the vehicle rolled over indicates that there was a sudden, multiple and catastrophic failure in the vehicle's brakes whereby the bend could not safely be negotiated.

[33] Had the failure in the vehicle's brakes happened at a more forgiving location it might well be that the consequences of the accident would have been greatly reduced. Indeed there might not have been an accident at all.

[34] The purpose of an inquiry such as this is to determine from the facts of the individual case those matters I have set out at the beginning of this Determination. An inquiry is necessary in this instance as, at the time of the accident, Mr Cormack was engaged in the course of his employment.

[35] I am grateful to Mr Barclay for his careful presentation of the facts in this matter and to Mr Thomson for his helpful input. Their submissions have assisted me greatly in assessing matters herein and drawing the conclusions that I have reached.

[36] Bruce Cormack was a popular, fit, 41 year old family man who died in a tragic accident going about his daily work. His loss has clearly affected many people.

[37] I offer my condolences to the family and friends of Bruce Cormack.