

**SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES & GALLOWAY
AT HAMILTON**

[2016] FAI 19

B608/2016

DETERMINATION

BY

SHERIFF DANIEL KELLY QC

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

into the death of

GEOFFREY MUSGRAVE

Hamilton Sheriff Court, 4 November 2016

The Sheriff, having considered the evidence adduced, determines in terms of section 6 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 that:

- (a) Geoffrey Musgrave, born 27 June 1965, died at about 2.00 pm on 27 May 2015 on the southbound carriageway of the A74(M) Glasgow to Carlisle motorway at about a quarter of a mile south of Junction 14;
- (b) the cause of his death was chest injuries due to a road traffic collision occurring at about 1.10 pm that day, when Mr Musgrave's Scania articulated lorry registration CN08FBZ there collided with Scania articulated lorry registration VL05UZY being driven by Sorinel Badulescu;
- (c) the death might have been avoided had Mr Musgrave taken action to avoid the collision but, in the absence of knowing why he failed to do so, there was no

- more general reasonable precaution identified which could have been taken whereby the death might have been avoided; and
- (d) there was no defect identified in the system of working which contributed to the death.

NOTE

Employment

[1] Mr Musgrave was employed by Haswell Moor Farm, Durham, as a heavy goods vehicle driver. His general duties involved transporting livestock around the United Kingdom. He had worked in this position for about eight years.

Accident

[2] On 27 May 2015 Mr Musgrave was driving Scania articulated lorry registration CN08FBZ, with trailer attached, in the course of his employment. He left his place of employment at Haswell Moor Farm at 5.17 am. He travelled to Bridge of Allan where at 9.11 am he off-loaded livestock. Thereafter, he recommenced driving at 9.19 am and stopped at 9.22 am. He began to drive again at 9.29 am and stopped to rest at 9.46 am, after 4 hours and 14 minutes of cumulative driving. He had 53 minutes of rest and began driving again at 10.39 am. He stopped for work at 10.40 am and then began his drive back to Durham at 11.07 am. This information was taken from Mr Musgrave's tachograph card, which was inserted in the digital tachograph in the vehicle.

[3] At about a quarter of a mile south of Junction 14 on the A74(M) a sign warned that the inside of the three lanes was closed further ahead for roadworks. The lorry driven by Mr Badulescu in that lane began to slow down. The lorry behind it driven by Mr Musgrave continued at a constant speed of 56 miles per hour. Mr Musgrave was not wearing a seatbelt. The lorry driven by Mr Musgrave drove head on into the rear of that driven by Mr Badulescu, causing a massive impact. Both lorries continued onto the hard shoulder, where they came to a stop. While a pulse could still be detected from Mr Musgrave in the immediate aftermath, he was never able to make any response and died shortly thereafter, before the paramedics could arrive. He was pronounced dead at about 2.00 pm. The motorway had to be closed off as a result of the collision.

[4] A post mortem examination of the body of Mr Musgrave took place on 27 May 2015 at the Southern General Hospital, Glasgow. That examination was performed by Dr Julie McAdam MB ChB FRCPATH DipFM and Dr John Williams BSc(Hons) MBBS AICSM FRCPATH DMJ(Path), both Forensic Pathologists, University of Glasgow. They found that Mr Musgrave had died of chest injuries entirely consistent with being involved in a road traffic collision. Of note, the heart was of normal size and configuration and there was no coronary artery disease. Analysis of post mortem blood and urine revealed relatively low levels of alcohol, at least some of which may have been produced post mortem.

Cause of death

[5] The immediate cause of the injuries resulting in the death was the failure of Mr Musgrave to react as he approached the lorry ahead of him on the carriageway. With that lorry proceeding in lane 1 at 37 miles per hour, he continued without deviation at 56 miles per hour and collided head on into the rear of it. The cause of death was certified as being chest injuries due to a road traffic collision (driver). Of greater relevance and significance is the cause or explanation of that incident having occurred. Despite extensive examinations, no reason has been identified to explain this, leaving it as unascertained.

Exclusion of possible factors

[6] It is evident that the collision could have been avoided had Mr Musgrave not driven in the manner that he did. However, any general reasons or any defects which might have accounted for it have been examined but excluded.

[7] Mr Musgrave had a full valid United Kingdom driving licence and held the following categories on his licence in addition to Category B (cars/small vehicles):

- a. Category C1 (vehicles from 3,500 to 7,500 kilogrammes with a trailer of up to 750 kilogrammes),
- b. Category C1E – (C1 category vehicles with a trailer over 750 kilogrammes but the trailer fully loaded must not weigh more than the vehicle),
- c. Category C (vehicles over 3,500 kilogrammes with a trailer up to 750 kilogrammes), and
- d. Category CE (category C vehicles with a trailer over 750 kilogrammes).

[8] Analysis of Mr Musgrave's driver's card revealed that he had a rest period in the three days preceding the collision where he did not drive in the course of his employment. There was no information obtained from the digital tachograph or from Mr Musgrave's driver card to suggest that the driver's hours of Mr Musgrave may have been a contributing factor to the collision. There was also no information to suggest that the tachograph machine was faulty prior to the collision. Analysis of the tachograph machine within the vehicle and Mr Musgrave's driver's card revealed no offences relating to drivers' hours and a speed trace showed that Mr Musgrave was travelling at a constant speed of 56 miles per hour before the power supply to the tachograph machine was cut at 1.10 pm. While it was not ascertained whether the lorry was fitted with a speed control and, if so, whether it was activated, the constancy of the speed would indicate that this was so.

[9] Mr Musgrave had no medical conditions and was taking no medication that would have affected his driving. He had last had a heavy goods vehicle medical examination in June 2010, which he had passed, and would have had his next such examination in June 2015.

[10] There is no indication that Mr Musgrave was suffering from sleep deprivation. There was no prior movement from side to side, which would have been expected had a driver fallen asleep.

[11] Mr Musgrave's mobile phone was recovered from the cab of the vehicle. This phone was examined and there was no information recovered to suggest that it was being used at the time of the collision.

[12] Analysis of the tachograph chart within the articulated lorry registration VL05UZY revealed that at the time of the impact it was travelling at around 37 miles per hour. There was no information to suggest that Sorinel Badulescu had committed any offences in relation to his driver hours.

[13] At 8.00 am on 1 June 2015 PC Ann Alexander attended at Westons Recovery Yard, Crawford, along with Scott McIntyre from the Driver and Vehicle Standards Agency. PC Alexander carried out a full mechanical examination of each articulated lorry and found no defects contributory to the crash. The extent of the damage to the vehicles was indicative of this resulting from a major impact.

Seatbelt

[14] Dr Julie McAdam is of the view that the injuries sustained by Mr Musgrave are consistent with him not wearing a seatbelt at the time of the collision. She has indicated that it is possible that the fatal injuries suffered by Mr Musgrave could have been sustained even if he had been wearing a seatbelt. This was due to it being a head-on collision, with the central dashboard being pushed back into the driver and passenger area. Of a 2.4 metre cab, the crash damage pushed the front of the cab back by 1.02 metres. The bottom centre of the steering wheel was pushed back to 0.5 metres from the centre of the driver's seat back rest, 0.22 metres from the front of the seat cushion.

[15] The Crown did not consider that the wearing of a seatbelt would have resulted in the death being avoided. No finding is, therefore, made to the effect that it would have made any difference in this case, given the crushing type of injury which

was sustained. However, from his experience as a traffic officer, PC Martin Grassom was able to speak to the low level of usage of seatbelts by lorry drivers. While not professing to be fully conversant with the research, such research as he had consulted indicated a low level of seatbelt usage by lorry drivers, despite such usage being mandatory except in the recognised limited circumstances applicable to all drivers. While not established as a factor in this particular death, the circumstances of this accident showing the potential unforeseen hazards of driving only serve to underline the importance of the wearing of seatbelts, including by lorry drivers.

Concluding remarks

[16] Finally, I extend my condolences to Mr Musgrave's family.