

SHERIFFDOM OF TAYSIDE CENTRAL AND FIFE AT STIRLING

[2017] FAI 12

STI-B200-16

DETERMINATION

BY

SHERIFF W A GILCHRIST

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

into the death of

RACHEL HELEN CASSELLS

Stirling, May 2017

[1] This Inquiry examined the circumstances surrounding the death of Rachel Helen Cassells on 4 April 2015, after she was in collision with a coach being driven by Brian Alexander. At the time of her death, Mrs Cassells was employed by the Edinburgh Woollen Mill Ltd. At the Inquiry, the Crown was represented by Mr Gavin Callaghan, Principal Procurator Fiscal Depute. Ms Susan Duff, Advocate appeared for the Edinburgh Woollen Mill Ltd and Ms K Bennett, Advocate appeared for Brian Alexander.

[2] The following witnesses gave evidence at the Fatal Accident Inquiry on 23, 24 January and 19 April 2017:

PC Gordon McColl

Police Sergeant Donald Konkol

PC Robert McCulloch

Michael Kibaris

James Turnbull

Brian Alexander

Elaine Allan

Myra Kyle

Steven John McLaren

Peter Neil Innes

PC Stephen Softley

PC Paul James

[3] The evidence clearly established that Mrs Cassells was struck by a coach being driven by Brian Alexander. The collision occurred in the car park of the Trossachs Woollen Mill at Kilmahog by Callander. At the time of her death, Mrs Cassells was an employee of the Edinburgh Woollen Mill Ltd. She was employed as a food services assistant.

[4] There was very little dispute about the surrounding circumstances, except in relation to 2 matters. The first related to the question of why Mrs Cassells was in the car park and whether it was her habit to go out to meet coaches as they arrived at the Woollen Mill. The second more significant area of uncertainty related to the precise circumstances leading to the collision. It was not clear from the evidence whether Mrs Cassells had fallen before she was run over by the coach or whether the coach collided with her, knocking her to the ground, and then ran over her.

[5] Mrs Cassells was employed as a food services assistant. Her role was to work in the cafeteria in the main building. It was not part of her remit to greet coach parties. Employees from the Trossachs Woollen Mill who gave evidence indicated that they did not know why Mrs Cassells would have gone into the car park. The practice was for coach parties to be greeted by staff members when they entered the main building. However, there was evidence that Mrs Cassells was in the habit of going into the car park to greet coach parties. Witness Kyle, who was working in the main building when the accident happened, spoke to having heard that Mrs Cassells did on occasion greet coach parties. Witness McLaren, who was the food services manager, spoke of her having done so on the odd occasion. That was also the evidence of witness Turnbull who was the tour guide on the bus being driven by Brian Alexander. His evidence was that Mrs Cassells was known to come out to speak to the tourists. This was also the position of David Ross who was a tour guide on another coach waiting to enter the car park. This witness did not give evidence at the Inquiry but, in his statement recorded by the police, he said that it was normal practice for Mrs Cassells to come out and meet the passengers from the buses.

[6] What was clear is that there was no other reason for Mrs Cassells to be in the car park. She was clearly intent on greeting passengers from Mr Alexander's coach although it was not her job to do so.

[7] Mr Alexander's coach arrived at the car park about 18.35 hours on 4 April 2015. Normal practice was for coaches to enter the car park and perform a turn in order to reverse into the coach bays at the rear of the car park. The evidence clearly established

that Mr Alexander had entered the car park and had started to perform the turn but had stopped before completing the turn. He was not therefore in a position where he could have reversed into one of the parking bays. Witness Turnbull, the guide in Mr Alexander's coach, spoke to seeing Mrs Cassells walk towards the coach. He described her being about 6' away from the coach when he lost sight of her. At this point, Mr Alexander moved the coach forward to complete his turn and at this point witness Turnbull became aware of the possibility that the coach had hit someone. Mr Alexander stopped the coach and then reversed a small distance. Witness Turnbull left the coach and found Mrs Cassells on the ground, positioned in line with the front near-side wheel of the coach.

[8] Mr Alexander gave evidence but chose not to answer most of the questions put to him. He had been given the usual warning that he need not answer questions which were self-incriminating. The Crown had not taken any criminal proceedings against Mr Alexander but had not given him immunity from prosecution. On the day of the accident, Mr Alexander had spoken to PC Softley. He told PC Softley that the sun was coming low over the weaving shed and was obscuring his mirror with glare. Witness Kyle, in her evidence, said that Mr Alexander had volunteered to her that Mrs Cassells had been on his blind-side. Witness McLaren had also told the police that Mr Alexander had told him that the sun was blinding him. It was clear from all witnesses that it was a very sunny day and, at the time of the accident, the sun would have been almost directly in front of Mr Alexander and fairly low in the sky.

[9] The principal area of uncertainty in relation to the collision between the coach and Mrs Cassells relates to the question of whether or not she had fallen before the coach ran over her or whether the coach knocked her to the ground. David Ross, in his statement to the police, described Mrs Cassells walking across the car park to Mr Alexander's coach. He described her as walking alongside the coach towards the door at the front. He then saw her stumble and fall to the ground and roll over onto her back just as the wheels of the coach were turning. He described the front near-side wheel as rolling up onto her legs.

[10] Two statements from witnesses who had been on the coach waiting to enter the car park were made available to the Court. These were the statements of Sergio Campsie and Julia Jung. Mr Campsie described seeing Mrs Cassells walking beside the first bus towards the left side of it. He described her as walking about a metre out from the bus and to her being about 2 metres behind the front side door. He described her as walking around and to appearing not to be paying much attention to the bus. He described looking away and to then looking back at which time he described Mrs Cassells as having fallen over. He then described seeing the front left wheel of the bus drive over Mrs Cassells' left leg. In his statement Mr Campsie indicated that he had not seen Mrs Cassells falling.

[11] In her statement, Ms Jung indicated that she had seen Mrs Cassells at the side of the bus. In her police statement, the witness said that Mrs Cassells "seemed to be pushed by the bus, by the left side of the bus".

[12] As this witness did not give evidence, it was not possible to clarify precisely what she meant. This is unfortunate as this is the only potential witness who spoke to the possibility of there having been a collision between Mrs Cassells and the coach before the coach ran over her leg. Both the Crown and Counsel for Mr Alexander invited the Court to hold that Mrs Cassells fell before the coach came in contact with her. That conclusion would be consistent with the evidence of witness Turnbull and with the police statements of witnesses Ross and Campsie. As Ms Jung had not been asked by the police officer noting her statement to clarify what she meant by “seemed to be pushed by the bus”, I was invited to attach little weight to her statement.

[13] For my part, I accept that the predominance of evidence is that Mrs Cassells fell before she was run over by the bus. On the other hand, there is no explanation as to why she would have fallen. There was no evidence about any trip hazards and there is no suggestion that she was running. On one view, the only plausible explanation for her being on the ground is that she was knocked over by the coach. However, given the weight of evidence to the contrary, I am not in a position to make a finding of fact to that effect.

[14] With regard to the actions of Mr Alexander, the evidence of witness Turnbull was that Mr Alexander was looking around and checking if it was safe to move with a view to starting his reverse manoeuvre. Witness Turnbull spoke to seeing Mr Alexander check his mirrors before moving the bus forward.

[15] There was evidence that Mrs Cassells may have been in a blind spot. Unfortunately, there was no police accident reconstruction and no check of the mirrors

or line of sight of the driver was carried out while the bus was in its post-accident position. It was submitted on behalf of Mr Alexander that the Court could not reach any conclusion in relation to the blind spot issue or whether or not the sun was blinding Mr Alexander at the time of the accident. Evidence was given by PC Softley about his examination of the mirrors on 10 April 2015. This was several days after the accident. PC Softley and his colleague spoke to finding a blind spot about 5'5" from the front wheel of the coach. This extended for a further 5'5". His evidence was that if Mrs Cassells had been on the ground approximately 6' from the coach then Mr Alexander would not have been able to see her in the mirror. His colleague, PC James, confirmed that if Mrs Cassells had been standing then she would have been visible in the mirror. The experiment conducted by PC Softley and PC James, which involved them taking turns to lie on the ground, proceeded on the assumption that Mrs Cassells had fallen prior to the bus running over her.

[16] Given the possibility that Mrs Cassells only fell because the bus was in collision with her, and given the fact that no attempt was made to check for blind spots, I am not in a position to attach much weight to this evidence. If Mrs Cassells had fallen before the coach struck her then PC Softley's investigations may provide a possible explanation as to why Mr Alexander did not see her in the mirror. On the other hand, if Mrs Cassells had remained standing until struck by the coach, the more likely explanation in not seeing Mrs Cassells was that the sun was blinding him. What is clear is that Mr Alexander only moved the coach a very short distance and at a very low speed. I also

accept the evidence of witness Turnbull that Mr Alexander at the time was checking his mirrors.

[17] In the whole circumstances, I do not think that I am in a position to make any findings in relation to reasonable precautions or defects in any system of working.

Neither the Crown nor other parties to the Inquiry invited the Court to make any such findings. The evidence points to this having been an unfortunate accident which would not have happened if Mrs Cassells had not gone into the car park to greet the coach, and more particularly, if she had not approached close to the coach before it had completed the parking manoeuvre. As to whether Mr Alexander should have seen Mrs Cassells prior to running over her, that depends on whether she had or had not fallen to the ground before the collision.

[18] My determination is therefore in the following terms:

Section 6(1)(a) – where and when the death in any accident resulting in the death took place.

Rachel Helen Cassells was born on 30 October 1964. At the date of her death, she was ordinarily resident in Stirling.

The accident (namely Mrs Cassells coming into contact with the aforesaid coach) resulting in the death of Mrs Cassells took place in the car park of the Trossachs Woollen Mill, Kilmahog, by Callander at approximately 18.35 hours on Saturday 4 April 2015. Mrs Cassells died at 20.20 hours that day in the Southern General Hospital in Glasgow.

Section 6(1)(b) The Cause of Death in any Accident Resulting in a Death

Mrs Cassells came into contact with a coach being manoeuvred in the car park of the Trossachs Woollen Mill. Mrs Cassells died as a result of the injury she sustained after coming into contact with the coach. The cause of death was (1)(a) Pelvic and Left Leg Injuries, (b) Road Traffic Collision (Pedestrian).

I do not make any findings in relation to Sections 6(1)(c), 6(1)(d) or 6(1)(e).