

**SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES AND GALLOWAY AT
LANARK**

[2021] FAI 39

LAN-B24/20

DETERMINATION

BY

SHERIFF NIKOLA C STEWART, ADVOCATE

UNDER THE INQUIRIES INTO FATAL ACCIDENTS AND SUDDEN DEATHS ETC
(SCOTLAND) ACT 2016

into the death of

JOHN DOCHERTY

Lanark, 14 August 2020

The Sheriff having considered the productions, the terms of the joint minute and the written and oral submissions presented at the inquiry finds and determines in terms of section 26 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 that:-

[1] In terms of section 26(2)(a) of the 2016 Act John Docherty, born 25 November 1956, died at approximately 0323 hours on 13 March 2019 at [redacted]. This was the time when his life was formally pronounced extinct.

[2] In terms of section 26(2)(b) of the 2016 Act the accident resulting in his death took place at approximately 0154 hours on 13 March 2019 on the A73 Abington to Cumbernauld road at or about [redacted].

[3] In terms of section 26(2)(c) of the 2016 Act the cause of death was multiple injuries due to a road traffic incident in which Mr Docherty was the driver of a Mercedes Actros articulated tractor unit. No other vehicles or parties were involved.

[4] In terms of section 26(2)(d) of the 2016 Act the accident was caused by the impact of adverse weather conditions involving heavy rain, poor visibility and strong gusts of wind of up to 75 mph which caught the lightly loaded curtain sided tri-axle trailer being drawn by the Mercedes Actros articulated lorry registration number WX17 YVH, causing the lorry to topple onto its offside. It landed on top of a dry stone wall on the south side of [redacted] and continued along the wall causing extensive damage to the offside of the cab before coming to rest. The deceased's vehicle was travelling at 55 mph at the time.

[5] Makes no findings in terms of sections 26(2)(e) and (f) of the 2016 Act.

[6] In terms of section 26(2)(g) of the 2016 Act there are no other facts which are relevant to the circumstances of the death.

Recommendations

In terms of section 26(1)(b) of the 2016 there are no recommendations as to any of the matters mentioned in sub-section (4) which might realistically prevent other deaths in similar circumstances.

NOTE**The legal framework.**

[1] A fatal accident inquiry was held under the Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 (“the 2016 Act”) into the death of John Docherty who died on 13 March 2019. He was at the time of his death employed as an HGV driver with JBT Distribution Limited, Bathgate and his death was the result of an accident which occurred in the course of that employment. In terms of section 2(3) of the 2016 Act an inquiry was required to be held into the circumstances of his death.

[2] The Procurator Fiscal issued notice of the inquiry on 25 February 2020. The first order was granted on 10 March 2020. A preliminary hearing was due to be held within Lanark Sheriff Court on 8 June 2020 but required to be discharged due to issues resulting from court closure as a result of the Covid 19 disruption and to intimation difficulties. A fresh diet was assigned for 22 June 2020. Mr Richard Hill, Procurator Fiscal Depute, appeared throughout for the Crown. The only interested party represented at the inquiry was the deceased’s employer who was represented throughout by Mr Lothian, solicitor. The family were interested in the outcome and conduct of the inquiry but were not represented. The inquiry was held on 12 August 2020.

[3] It became clear at the preliminary hearing, which proceeded by conference call, that all matters were capable of agreement and a Joint Minute of Agreement between the Crown and JBT Distribution Limited was thereafter tendered to the Inquiry. Having had regard to its terms and to the terms of the productions lodged I was satisfied that

the scope and extent of the inquiry could be thereby limited and no witnesses were called to give evidence.

[4] This inquiry is held under section 1 of the 2016 Act and governed by the Act of Sederunt (Fatal Accident Inquiry Rules) 2017 (SSI 2017/103). The inquiry was initiated by the procurator fiscal, who represents the public interest, in accordance with his statutory duty to do so. The purpose of an inquiry under section 1(3) of the Act is (a) to establish the circumstances of the death and (b) consider what steps, if any, might be taken to prevent other deaths in similar circumstances. The inquiry is an inquisitorial process and, under section 1(4) of the Act, it is not its purpose to establish civil or criminal liability.

Summary and Conclusion

[5] The mechanism and circumstances of the accident are not disputed. No oral evidence was led. The deceased, John Docherty, was employed as a heavy goods vehicle driver by JBT Distribution Limited and had been since 2013. He was a full time employee and worked a regular night shift route driving from JBT Distribution's East Kilbride depot to Carnforth, Lancashire and back.

[6] He had received training during the course of his employment including completion of one day Driver CPC Periodic courses in "On The Road Industry Training and Vehicle Stability" and "Load Securing" in April and May 2014. He was subject to ongoing assessment by his employers of his performance and compliance with company policies by means of the use of a vehicle tracking system and results put him in the top

10% of his peer group. He was regarded by his employers as a competent and skilled professional driver. He had had no previous accident whilst employed by them. The vehicle tracking system employed by JBT Distribution Limited noted *inter alia* lorry speed throughout each journey.

[7] On 12 March 2019 he commenced his shift at or about 1900 hours arriving at Truck haven, Carnforth at or about 2220 hours. Having deposited his trailer he collected his return load which consisted of a standard box trailer approximately 13.6 feet in height carrying a light load of approximately 5.96 tonnes. He commenced the return journey to East Kilbride at or about 2333 hours. His specific route of travel was not prescribed by his employers and was open to the discretion of the driver.

[8] Weather conditions throughout his journey were challenging. Between 1200 on 12 March 2019 and 1500 hours on 13 March 2019 a yellow weather warning was in place for areas of the United Kingdom including the North of England, the South of Scotland and Strathclyde. Heavy rain and strong west to north-westerly winds were expected to hit southwest Scotland late on Tuesday evening with gusts of up to 55 mph inland. The deceased had been advised of the yellow weather warning covering his route prior to commencing his shift by his shift manager who provided him with an update on the weather forecast by telephone prior to the commencement of his return journey. In the event that a JBT driver felt unable to proceed with a journey due to adverse weather conditions, the driver would have been paid in full.

[9] At or about 0154 hours on Wednesday 13 March Mr Docherty was travelling northwards on the A73 between Robertson and Lanark. The A73 is a main arterial route

extending generally north and south through Lanarkshire from Abington in the south to Cumbernauld in the north. The accident occurred on a rural section of the road approximately 3 miles north of Abington adjacent to [redacted]. At this location the road consists of a single carriageway with two lanes of traffic, one in either direction, separated by a system of hazard warning lines, indicating that there is a hazard ahead. On the east of the carriageway there is a raised kerb prior to the verge and a stob and wire fence beyond which are farm fields. The access road to the [redacted] is bounded on each side by a stone wall approximately one metre in height.

[10] The road is 250 metres above sea level. High winds with gusts of up to 75 mph were reported by the Meteorological Office that night. It was dark and raining heavily. Visibility was poor and the road surface was wet.

[11] There is a 40 mph speed limit on this section of the road for articulated lorries. Whilst the speed limit for HGV vehicles over 7.5 tonnes, such as this, had increased in England from 40 mph to 50 mph on or about 6 April 2015, no such increase was implemented in Scotland. The difference in speed limits between Scotland and England and Wales was brought to the attention of all JBT Distribution Limited's drivers by means of prominently displayed posters. It was the subject of extensive discussion within the haulage industry and amongst HGV drivers at the time.

[12] From the vehicle tracking evidence recovered, the deceased was travelling at 55 mph immediately before impact. Impact occurred at 0154 hours on 13 March 2020.

[13] A colleague from JBT Distribution was travelling the same route as the deceased. He came across the overturned lorry. He stopped and tried to locate the deceased

within the cabin but could not do so. He contacted emergency services. The deceased was later located in the cabin of the lorry, obscured by bricks from the wall with which the vehicle had collided. He was observed to have sustained substantial crush injuries to his head. Life was pronounced extinct at the scene at 0323 hours.

[14] Police Collision Investigators attended the scene of the incident. They prepared a Collision Investigation Report based upon their examination of the scene and of the lorry and trailer involved, together with photographs of the scene and the results of mechanical examination of the vehicle and reconstruction of the accident. It confirms that the road was in a generally good state of repair and was free from obvious defects as were the lorry and trailer. There was no street lighting at the scene. The deceased had been wearing a seat belt at the time of the incident. No issue was taken with its conclusions with which the court concurs.

[15] The height and weight of the trailer and the lightness of its load would have made Mr Docherty's vehicle susceptible to the prevailing weather conditions and in particular to the unusually strong gusts of winds. The locus comprises of an open stretch of road which provided little or no shelter. Mr Docherty had negotiated a slight left hand bend shortly before the incident which would have resulted in the vehicle naturally leaning onto its offside. The speed of the vehicle, in excess of the applicable limit, during this manoeuvre would have made it less stable than at a lower speed. These factors in combination resulted in Mr Docherty's vehicle toppling onto its offside with the driver's cabin landing on top of a dry stone wall. The cabin was extensively

damaged as a result and penetrated by rocks all of which resulted in the fatal injuries to Mr Docherty.

[16] All parties involved in this Inquiry offer their sincere condolences to Mr Docherty's family, friends and work colleagues.