Neutral Citation No. [2013] NICC 15

Ref: **WEI9007**

Judgment: approved by the Court for handing down
(subject to editorial corrections)

Delivered: **15/10/2013**

IN THE CROWN COURT IN NORTHERN IRELAND

THE QUEEN

v

J MURRAY & SON LTD

WEIR J

[1] The defendant company ("the company") has pleaded guilty to the offence of Corporate Manslaughter contrary to Section 1(1) of the Corporate Manslaughter and Corporate Homicide Act 2007.

[2] The circumstances giving rise to the charge are that on 28 February 2012 a Mr Norman Porter ("the deceased") was working for the company at or near a meal mixer used to blend the various ingredients of animal feed. The working method which had been devised by Daniel James Murray, effectively the controlling director of the company, was that ingredients were introduced into the mixer through the top of the machine. In order to permit this to take place sections of the upper metal protective covering had been removed from the machine which was then operated without their being in place despite the fact that the removal left moving parts within the machine exposed and accessible.

[3] The machine could have been safely and cheaply modified to render it safe for this "top filling" method of use had the removed panels then been replaced by a feed hopper comprising a mesh screen bolted over the working parts so that the ingredients could safely flow through the mesh from above into the machine together with a hopper with its height determined so as to prevent any possibility of the dangerous working parts being reached by upper or lower limbs through the protective mesh. The cost of such a modification would have been less than £5,000 if carried out by the manufacturer of the machine and probably rather less than that if manufactured and fitted by a local tradesman.

[4] Nobody witnessed the accident that caused the deceased to be killed in the machine where his body was found. However it was plainly entirely foreseeable,

indeed obvious, that a person either deliberately or accidently entering the danger zone of the machine would meet with serious injury or death. During the course of his subsequent police interviews Mr Murray was asked whether he appreciated that after the top panels had been removed something might have fallen into the machine to which he replied "… that machine was as safe as a row of houses for me working and anybody working and I don't know what happened that day."

[5] Plainly the machine as altered and then operated by the defendant was anything but safe and had the necessary relatively inexpensive mesh and hopper arrangement needed to enable safe top filling been installed the deceased could not have come into contact with the moving parts and been trapped and drawn in to his terrible death. That death was entirely attributable to the negligent behaviour of the company at its highest level of direction. There can be no question but that this was an obvious and gross breach of the duty of care owed by the company to the deceased whose very grave potential consequences ought to have been plainly obvious to Mr Murray had he given them a moment's thought. Mr McCollum QC has submitted on behalf of the company that it never occurred to Mr Murray, despite the fact that he actually operated this machine himself, that the machine in its unguarded state posed any danger. I cannot accept that submission. The danger was so obvious and so serious that the man who principally operated the machine himself could not conceivably have been unaware of its dangers. I conclude rather that he was well aware of the danger that had been created by removing the top panels and deliberately turned a blind eye to it.

[6] The deceased was a hard-working man of 47 years who had throughout his life sought out whatever casual or permanent employment he could find, usually working with farm animals and machinery but also as a groundsman and in a sawmill. His work with the company, which was of a casual nature, had only begun after Christmas 2011. He worked under the supervision of Mr Murray who, as I have said, personally devised and directed the operations at this mixing plant. I have read an extremely articulate and poignant letter written by the deceased's daughter Nicole which attests to the lasting effect which her father's needless death has had upon the family. Plainly the imposition of a monetary penalty upon this company, which is the only penalty open to me by law, will do little to assuage the deep sense of loss that this family has suffered and will continue to suffer. However it can and will mark the court's strong disapproval of the grossly negligent and thoughtless way in which this machine was altered and operated, the failure to make any effort to purchase and fit a substitute form of guard to enable the machine to be top-loaded safely and the dreadful injuries and death, perfectly foreseeable, that have resulted.

[7] The company is a small rural enterprise of which the meal business is a minor element, the greater part being haulage and skip hire. The business was established in 1967 and neither it nor its directors have any previous convictions or recorded warnings for health and safety infringements. Some sixteen persons derive their

living from it. I heard evidence from a Chartered Accountant who has reviewed the financial state of the company based upon its last 4 years' financial statements. It is his opinion that the company is loss making, having been unable to generate operating profits for at least those last 4 years. It is currently unable to meet its substantial short-term liabilities from its liquid current assets and its net current liabilities are increasing. Its total assets include a present figure of £33,000 for land and buildings which has been arrived at by depreciating the historic cost of these items progressively over time in the conventional manner. Whether those particular assets could be re-valued to a higher figure at the present day cannot be ascertained without carrying out a property valuation exercise which has not been done. In the accountant's opinion the defendant company has no reasonable prospect of meeting anything other than a modest fine.

[8] I have approached the task of assessing the appropriate fine by reference to the careful Guidance Judgment of His Honour Judge Burgess in R v JMW Farm Limited [2012] NICC 17 in which he applied the sentencing guidelines devised by the Sentencing Council for England and Wales for Corporate Manslaughter and Health and Safety Offences Causing Death [Part 19]. I do not propose to set out those guidelines *in extenso* but rather to refer to those elements which appear to me to particularly apply to the circumstances of the present case. In assessing the seriousness of the offence I have taken account of the following matters while bearing in mind throughout that by its plea of guilty the company must be taken to have accepted the statutory ingredients of the offence to include implicit admissions that the breach here was gross, that is to say one where the conduct fell far below what could reasonably have been expected, and that a substantial element in the breach was the way in which the fatal activity had been managed by the senior management in the person of Mr Murray.

How foreseeable was serious injury?

As discussed earlier, I consider the risk of serious injury was obvious.

How far short of the applicable standard did the defendant fall?

In my view it fell far short.

How common is this kind of breach in the company?

As noted above, this is the company's first known breach of Health and Safety requirements.

How far up the organisation did the breach go?

It went to the very top.

[9] I do not consider that any aggravating circumstance exists apart from the failure to incur the costs of installing a suitable mesh and hopper arrangement to render top loading safe.

[10] As to mitigation, there was a prompt acceptance of responsibility albeit the company had little other option, a high-level of co-operation with the investigation was provided, remedial work has been carried out to belatedly render the process safe and since 1967 the company has a clear health and safety record. I also take account by way of mitigation of the plea of guilty which the prosecution has accepted was entered at the first practicable opportunity and also of the remorse expressed on behalf of Mr Murray and the company by Mr McCollum QC and attested to by the Reverend Mr Black whose congregation includes members of both families.

[12] I have taken careful account of the fact that the accounts presented and the evidence of the Chartered Accountant both indicate that the company is not flourishing and I have no wish to see it forced out of business, principally because it is providing significant employment in a rural area in these difficult economic times. Nonetheless the guidelines require that any fine must be punitive and sufficient to have an impact on the company. This is a very serious case and, while I hope that the fine I impose will not have the effect of terminating the business, the gravity of the matter must be reflected by a substantial commensurate fine. I re-emphasise that neither this nor any size of fine can, nor is it intended, to value the deceased's life in money. Furthermore any question of compensation for the family as a result of the death will be a matter for the civil courts and I make no order in that regard.

[13] Taking account of all the factors discussed above and allowing a discount of one third by reason of the timely guilty plea, the company is fined £100,000 to be paid in five annual instalments of £20,000 on 1 December in this year and on the same date in each of the years 2014, 2015, 2016 and 2017. Should there be any default in the payment of any of those instalments on their due dates then and in that event the entire remaining balance of the fine will thereupon become immediately due and payable. I further order that the costs of this prosecution in the sum of £10,450 be paid by the company on or before 1 June 2014.