IN THE DISTRICT COURT
AT MANUKAU

I TE KŌTI-Ā-ROHE
KI MANUKAU

CRI-2022-057-000412
[2024] NZDC 19871

WORKSAFE NEW ZEALAND
Prosecutor

v

GLENBROOK FARMING & EQUIPMENT HIRE LIMITED
Defendant

Hearing:	5 - 8 August 2024
Appearances:	B Finn and T Braden for the Prosecutor E Harrison and C Twyman for the Defendant
Judgment:	4 September 2024

RESERVED DECISION OF JUDGE R J McILRAITH

---

[1] Glenbrook Farming & Equipment Hire Limited faces one charge under the Health and Safety at Work Act 2015.

[2] It is alleged that being a PCBU having a duty to ensure, so far as is reasonably practicable, the health and safety of other persons, including Ashton Maharaj, Alviras Maharaj, Anish Maharaj, Sheik Shameer Khan, Rajenesh Mitesh Bhai and Shalvin Sanil Chand, was not put at risk from work carried out as part of the conduct of the business or undertaking, namely the hiring of a car transport trailer registration IOU34, did fail to comply with that duty and that failure exposed those persons to the risk of death or serious injury.

[3] The particulars of the allegation are that it was reasonably practicable for Glenbrook Farming & Equipment Hire to have:

(a) developed and implemented effective training of and provision of information to its workers to carry out the hiring of trailers to members of the public; and

(b) effectively implemented and monitored a safe system of work for the regular maintenance of trailers it hired to the public.

[4] The charge is pursuant to ss 36(2) and 48(1) and (2)(c) of the Act. The maximum penalty for the offence is a fine not exceeding $1,500,000.

[5] Glenbrook Farming & Equipment Hire has defended the charge. A judge alone trial was held before me over four days. Thorough and very helpful written submissions were subsequently filed by the parties two weeks after that trial.

[6] The procedure in ss 105 and 106 of the Criminal Procedure Act 2011 applies. Having heard the evidence and from counsel, I must consider the matter and then find Glenbrook Farming & Equipment Hire guilty or not guilty of the charge. I am required to give reasons for my verdict which I do now.

Background

[7] Glenbrook Farming & Equipment Hire Limited is a company that provides equipment hiring and leasing services. It operates in Glenbrook south of Auckland. Its directors are Mr Paramjit Mehami and his wife Mrs Parvinder Mehami. Mr Mehami is assisted in the day to day running of the business by one of his sons, Mr Abheyjit Mehami.

[8] On Friday, 26 February 2021, Mr Sheik Khan contacted Glenbrook Farming & Equipment Hire to hire a trailer so that he could travel to an address near Rotorua to collect a Nissan Navara which he had seen advertised for sale. That afternoon Mr Khan went to collect the trailer. Accompanying him was a friend Mr Anish Maharaj

and Mr Maharaj's friend Mr Shalvin Chand. Mr Maharaj had with him his two sons, Ashton and Alviras Maharaj. They travelled in Mr Maharaj's vehicle, a Toyota Prado.

[9] At Glenbrook Farming & Equipment Hire, Abheyjit Mehami dealt with Mr Khan. Mr Khan duly collected a vehicle trailer and Mr Mehami helped him and the others attach it to the Toyota Prado. At approximately 4 pm Mr Khan left the premises with his friends and headed to Rotorua where they arrived around 7 pm. Mr Khan was driving.

[10] In Rotorua Mr Khan and others met with a cousin of Mr Khan's, Mr Rajenesh Bhai. All then drove to the property at which the Nissan Navara was for collection. It was in Minginui. The Nissan Navara was loaded onto the trailer along with some spare parts and engine parts. It was secured with straps and Mr Khan and others left at around 9 pm to return to Auckland.

[11] At a point early on in this journey, Mr Khan stopped so that the load could be checked on the trailer. Mr Bhai then took over the driving. At about 10 pm they were travelling north on State Highway 38 at Rerewhakaaitu. While travelling along what is a straight and level stretch of road, Mr Bhai lost control of the Toyota Prado. The vehicle and the trailer overturned with both coming to rest back on their wheels. Tragically, Ashton Maharaj, who had been seated in the very rear of the Toyota Prado, but was not restrained, was severely injured in the accident and died at the scene. The other occupants of the Toyota Prado received moderate to no injuries.

[12] Police were involved. They examined the scene of the crash, the vehicles and all evidence related to the crash, so as to determine its cause. Based on that investigation, and other evidence identified during its own investigation, WorkSafe commenced this prosecution against Glenbrook Farming & Equipment Hire. I am advised that no police charges have been pursued.

[13] WorkSafe alleges that material causes of the accident included under-inflated trailer tyres and trailer wheel nuts that were under-torqued, and that these are issues that could and should have been identified, had Glenbrook Farming & Equipment Hire's maintenance systems for its trailers been adequate. WorkSafe also alleges that

there was miscommunication when the trailer was hired to Mr Khan. The trailer was not suitable for what it was meant to be carrying – a Nissan Navara. The trailer was overloaded. Mr Khan was not told what he could and should have been told about safely using the trailer.

Legal Principles

[14] Section 48 of the Act provides:

> **48 Offence of failing to comply with duty that exposes individual to risk of death or serious injury or serious illness**
>
> (1) A person commits an offence against this section if–
>
> (a) the person has a duty under subpart 2 or 3; and
>
> (b) the person fails to comply with that duty; and
>
> (c) that failure exposes any individual to a risk of death or serious injury or serious illness.
>
> (2) A person who commits an offence against subsection (1) is liable on conviction,–
>
> (a) for an individual who is not a PCBU or an officer of a PCBU, to a fine not exceeding $150,000;
>
> (b) for an individual who is a PCBU or an officer of a PCBU, to a fine not exceeding $300,000;
>
> (c) for any other person, to a fine not exceeding $1.5 million.

[15] The subpart 2 duty relevant to this case is set out in s 36(2) of the Act. It provides:

> **36 Primary duty of care**
>
> (2) a PCBU must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

[16] Section 30 of the Act is also relevant. It provides:

> (1) A duty imposed on a person by or under this Act requires the person–
>
> (a) to eliminate risks to health and safety, so far as is reasonably practicable; and

(b) if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable.

(2) A person must comply with subsection (1) to the extent to which the person has, or would reasonably be expected to have, the ability to influence and control the matter to which the risks relate.

[17] "Reasonably practicable" is defined in s 22 of the Act. It provides:

> In this Act, unless the context otherwise requires, reasonably practicable, in relation to a duty of a PCBU set out in subpart 2 of Part 2, means that which is, or was, at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters, including-
>
> (a) the likelihood of the hazard or the risk concerned occurring; and
>
> (b) the degree of harm that might result from the hazard or risk; and
>
> (c) what the person concerned knows, or ought reasonably to know, about—
>
> (i) the hazard or risk; and
>
> (ii) ways of eliminating or minimising the risk; and
>
> (d) the availability and suitability of ways to eliminate or minimise the risk; and
>
> (e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

[18] Prosecutions under s 48 of the Act do not require proof of causation in order to find guilt.[1] However, where WorkSafe charges and pursues a case on the basis there is causation between alleged failure and eventuated harm, this requires the court to examine that causative link, not just in the context of sentencing but in reaching a conclusion as to guilt.

[19] In *Pegasus Engineering*[2] the High Court observed:

> "WorkSafe says that it is an element of offending under s 48 HSWA that there is at least an identifiable individual who is exposed "to a risk of death or serious injury or serious illness". It accepts that it is not a required element of offending under s 48 HSWA that there has been an individual who has in fact

[1] WorkSafe New Zealand v Centre Port Limited [2018] NZDC 15394.
[2] Pegasus Engineering Limited v WorkSafe New Zealand [2019] NZHC 2257 at [30] – [32].

been harmed, simply that there is an individual who has been exposed to the risk of certain types of harm.

WorkSafe says that it does not automatically follow that, absent actual harm being an element of the offending, the offending is against the public at large. Nor does it follow that offending against the public interest cannot include offending against an individual (or individual). That is frequently the case with offending under s 48 HSWA."

[20] In this case the defendant accepts that generally prosecutions under s 48 do not require proof of causation in order to find guilt. In *CentrePort*[3] the Court noted:

> "Causation is not an element of this offence. The charge to which the defendant has pleaded is that the defendant "exposed the workers to a risk of death or serious injury" by not having a safe system, not that the defendant caused the death of one of the defendant's workers. The fact that the risk of death eventuated can only therefore be an aggravating factor in sentencing, the significance of which increases if it can be established beyond a reasonable doubt that the absence of a safe system caused the deceased's death."

[21] A conventional approach is taken with respect to causation. Once more, in *CentrePort*[4] the Court noted:

> WorkSafe's theory of the cause for Mr Whaanga's death naturally calls for a conventional approach to causation. It must be proven that the act or omission of the defendant, in this case its failure to develop and implement a safe system undertaking container roof repairs, was a "substantial and operative cause" of his death. This is the appropriate approach in a case where it is alleged that a defendant's act or omission has set in train a linear chain of events which in the end, sometimes in an unexpected way, results in the death of the deceased. Substantial in this context does not mean that it needs to be the sole cause of death. There may be other causes which contributed to the death, it being sufficient that the defendant's act or omission contributed significantly, that is, it was more than a minimal factor… an "operative" cause is one which continues to have effect up to the time of the death. It is in the context of this approach that CentrePort's theory that the death may have been the result of a failure on the part of hospital medical personnel to undertake the second operation earlier must be assessed. Generally an intervening act of medical negligence will not break the chain of causation unless it is of such a nature that it can be seen as the sole cause of death.

[22] An offence under s 48 of the Act is one of strict liability to the extent that there is no *mens rea* requirement. The onus of proof lies on Worksafe. The standard of proof is, of course, beyond reasonable doubt. Worksafe must prove each element of the offence to the required criminal standard.

---

[3] WorkSafe New Zealand v CentrePort Limited [2018] NZDC 15394 at [8].
[4] at [14].

Elements of the offence under sections 36(2) and 48

[23] To find the company guilty of the charge it faces, I must therefore be satisfied beyond a reasonable doubt that:

(a) Glenbrook Farming & Equipment Hire Limited was a PCBU as defined in s 17 of the Act;

(b) Glenbrook Farming & Equipment Hire Limited owed a duty to ensure, so far as is reasonably practicable, that the health and safety of other persons, including those persons listed earlier, was not put at risk from work carried out as part of the conduct of its business or undertaking;

(c) Glenbrook Farming & Equipment Hire Limited failed to comply with that duty in the ways alleged in the charge, namely, failing to take the reasonably practicable steps identified; and

(d) Those failures exposed those other persons to a risk of death or serious injury.

[24] The first two elements were not in dispute. Glenbrook Farming & Equipment Hire Limited is, of course, a PCBU as defined in the Act. Further, it accepts that it had a duty to ensure, so far as is reasonably practicable, the health and safety of other persons, including those listed, was not put at risk from its work.

[25] The focus is, accordingly, on the remaining two elements of the charge. Whether there was a failure to comply with that duty and whether the failures exposed those other persons to a risk of death or serious injury.

Evidence

[26] In this trial evidence was called by Worksafe from Mr Khan, Mr Chand, Mr Andrew Ward, a Worksafe inspector, Mr Eric Mutambo, a heavy equipment repair technician who did work for the company, Mr Bhai, Ms Tina Mitchell-Ellis, a former police crash analyst who produced a most thorough report, and Sergeant Ranganui

Martin. A statement was taken as read from Mr Noel Henderson, now deceased, an automotive technician engaged by Worksafe in its investigation.

[27] Agreed facts included details of an interview with Mr Paramjit Mehami.

[28] The company called evidence from Abheyjit Mehami.

[29] Expert evidence was provided by Mr John De Pont called by Worksafe and Mr Steve Bullot called by the company. Both had prepared careful written reports and were of great assistance to the court.

[30] I have considered all the evidence that was heard in this trial. I do not, however, intend to traverse it in great detail as that has not proven to be necessary once I have focussed on the key issues for determination.

[31] It is important, however, to address one important area of conflict in the evidence. The primary conflict of evidence was between the people involved in the hiring of the trailer and the evidence given by Abheyjit Mehami about his dealings with them on the day concerned. I did not find Mr Khan, in particular, to be a credible witness in several key respects. I accept the company's submission that Mr Khan was careful in his evidence and, to be blunt, was being untruthful in one instance in particular.

[32] As noted above, Mr Khan along with others went to collect the vehicle trailer from Glenbrook Farming & Equipment Hire on the afternoon of 26 February 2021. Mr Khan dealt with Abheyjit Mehami.

[33] In general, with respect to evidence concerning the interaction between Mr Mehami and Mr Khan, I preferred the evidence of Mr Mehami. My primary reason for this view is that the initial contact between Mr Khan and Mr Mehami was by Facebook Messenger. Defence Exhibit A was the Facebook Messenger exchange. Of particular importance was the suggestion by Mr Khan that he dealt with Mr Mehami by phone as well as by message. He alleged in his evidence that Mr Mehami had amended or otherwise fabricated their message exchange to make it look as though he

had asked for the trailer without telling Mr Mehami the purpose of his hiring it and that he said he needed a 2.5 ton trailer. Mr Mehami denied making any such fabrication.

[34] Given the logical flow of that message exchange, Mr Khan's allegations do not make sense in my view. It is highly improbable that Mr Mehami would have altered the message in the way he suggested. Rather, I have the clear view that the message exchange is as recorded. I was not impressed with Mr Khan's evidence on this point.

[35] There were also other instances where Mr Khan's evidence was lacking in credibility. For example, Mr Khan insisted that there were two employees working at the company premises when he arrived to collect the trailer. There was no other evidence to support the suggestion. I do not accept that there was a second person present.

[36] This in my view tends to support the conclusion that Mr Khan was attempting to distance himself from events and that he may well have told Mr Mehami that he was wishing to hire a trailer for the purpose of towing a light car. While Worksafe in its written submissions suggested that Mr Mehami's evidence in this regard "beggars belief", I consider, to the contrary, that there is a real possibility this is what occurred. There appears to me to be some merit in the suggestion that Mr Khan was concerned with paying additional money for a trailer with a higher weight-bearing ability. Mr Mehami's statement to Sergeant Martin that he had been told the purpose of hiring the trailer was to tow a ute, must be seen in the context that this was after the incident had occurred and he was aware that a crash had involved the towing of a ute on the trailer.

[37] With respect to Mr Mehami's process on the day of hiring the trailer, I accept his evidence that he went through his normal process. He advised Mr Khan, and others, on the safe use of the trailer at the time it was hired. His evidence was also that he would always undertake a basic check of a trailer prior to it being hired. This included checking lights, security chains, wheels, tyre pressure and that the party hiring the trailer was intending to use it for the right purpose. He was adamant in his evidence that he went through his normal process with Mr Khan and others. I accept that evidence and that it reflects the training he had recieved. He went further to say that

he explained how the braking system worked on the trailer, how the latches worked and discussed proper use of the trailer. This was supported by the evidence of Mr Chand who recalled Mr Mehami checking the trailer and talking to Mr Khan and his friends about the braking system.

[38] I therefore accept the defence submission that Mr Mehami explained the safe use of the trailer to Mr Khan and his friends at the time they collected the trailer. He was not informed of the express purpose for hiring the trailer and was given no opportunity to question Mr Khan in any meaningful way.

[39] I observe also in this context that Mr Mehami candidly acknowledged in his evidence that he had difficulty going through instructions with Mr Khan, Mr Chand and Mr Maharaj because they were not always listening attentively to him. This is one of those situations where observing witnesses give evidence is important. Mr Mehami, possibly due to his personal challenges, is not someone who would be overbearing or dominant in such a situation. It is clear he did his best to explain the safe operation of the trailer. I have accepted his evidence in that regard. He said that at least one of the men was listening. That he did so appears to be confirmed by some of the later events. Mr Khan, or others, appear to have used the braking system, albeit not always correctly, and, of course, to have used straps to restrain the ute and to have taken appropriate time to check the load.

Reasonably practicable step – inadequate trailer maintenance

[40] WorkSafe alleges that Glenbrook Farming & Equipment Hire had not effectively implemented and monitored a safe system of work for the regular maintenance of the trailers it hired to the public, and specifically, the trailer hired to Mr Khan. It observed that the consequences of supplying equipment such as a trailer in an unsafe condition are potentially and foreseeably catastrophic.

[41] Glenbrook Farming & Equipment Hire had purchased the trailer in November 2020. Mr Abheyjit Mehami's evidence was that when they had purchased it, he was happy with its condition. Neither Mr Mehami nor his father had any formal mechanical qualifications. Neither was qualified to properly inspect, repair or service

trailers that were being hired to the public. The business retained Mr Mutambo to provide part-time mechanical services. WorkSafe accepted that he was sufficiently qualified and experienced to properly inspect, repair or service trailers hired to the public.

[42] Mr Mehami's evidence was that he waited until Mr Mutambo had an opportunity to check the trailer before it was advertised for hire. The week after it had been purchased, Mr Mutambo attended at the company premises and undertook a "basic service" on the trailer which included looking at its wheels, wheel bearings and chains. A "service" was then undertaken by Mr Mutambo on 24 January 2021. A diary entry of Mr Mehami recorded:

> "Eric came today and do check-up all the trailer tire and lights and brake bearings. Which one they need fix up they done. All the trailer. Digger trailer and transport trailer. 3.5 Tonne transport trailer, and scissor lift trailer… All done by him"

[43] The evidence of Mr Abheyjit Mehami was that the company would document the work Mr Mutambo did in this diary. While Mr Mutambo's work commonly involved repairing equipment after a failed warrant of fitness, he also serviced equipment when required. While it is fair to say Mr Mutambo's recollection of exactly what work he had undertaken on the trailer was vague, (no criticism intended given the time that has past, and the lack of records that were kept), he was adamant that he would have raised anything serious with the company.

[44] Clearly the record-keeping of the company was informal to say the least. Mr Mutambo completed no paperwork to record his work. The only written record appears to be that made by Mr Mehami in the diary. Mr Mutambo was never shown those entries to check their accuracy. It is therefore very difficult to determine exactly what maintenance work was undertaken on any of the company equipment, including this trailer, and at any particular time. As WorkSafe submitted, proper records would have avoided the situation where the court has been left having to rely on the memories of those involved years after the fact.

[45] I was provided in evidence with documentation used by members of HIANZ. Glenbrook Farming & Equipment Hire Limited is not a member of that organisation

and had no legal obligation to be so. That system did, however, provide an exemplar of how maintenance could be documented. Notable also is the fact that some of the other trailers in the company fleet initially failed a warrant of fitness inspection when WorkSafe visited in January 2022 and prohibition notices or similar were issued.

[46] WorkSafe submitted that the evidence established that the company's systems for trailer maintenance were inadequate. It accepted that the company was not a large business but observed that it was hiring out large trailers to the public for commercial reward. Its responsibility is not diminished. It was entirely foreseeable that a failure to maintain vehicles properly could result in serious harm to members of the public using them. The cost of ensuring more and better documented maintenance would not have been disproportionate in the circumstances.

[47] There was considerable strength in WorkSafe's submission. There is no doubt that the company's procedures could have been better recorded and record-keeping more reliably kept. No doubt lessons have been learnt. I am not, however, of the view that the company did not have a safe system of work for the regular maintenance of the trailers it hired. While it is certainly not ideal to be left in the position of having to evaluate the somewhat meagre records that were available, it is clear that the company did have a system of maintenance and, in my view, that it was adequately maintaining the trailer. As noted, I accept Mr Mehami's and Mr Mutambo's evidence in that regard. I note for completeness that the trailer was registered and had a current warrant of fitness at all relevant times.

Inadequate training

[48] As noted, the company's sole employee was Abheyjit Mehami. It is clear that he received training for his position. However, the documentation recording that training was kept in a similar manner as its maintenance records.

[49] WorkSafe alleges that the company failed to appropriately train Mr Mehami to carry out the hiring of trailers to members of the public. More specifically, WorkSafe alleged at trial that Mr Mehami had not been trained to provide safety instructions to

members of the public hiring a trailer and to hitch a trailer to a customer's vehicle safely, including ensuring the brake interlock mechanism was engaged /open.

[50] The company submitted that the records produced at trial demonstrated that while perhaps training had been recorded in a relatively informal manner, Mr Mehami underwent health and safety training both at a general level and specifically in relation to the safe use and hiring of trailers. I accept that as a fair description of the evidence.

[51] There are records of health and safety meetings at the company which Mr Mehami attended including of a health and safety induction, record of personal protective equipment provided and specific training records relating to the safe use and hitching of trailers. Specifically, Mr Mehami was trained, by his father, in relation to load tie down, hitching and un-hitching trailers for customers, and basic maintenance for machinery to be fit for hire. Mr Mehami stated that he had also been trained on hitching and un-hitching trailers including training on how to hitch a trailer to a towbar, how to put the jockey wheel up and down, how to know the towbar is locked perfectly, how to put chains on and how to ensure lights are operating.

[52] The company in its written submissions submitted that while the documentary record of training is not of the breadth perhaps expected from a larger organisation, there was nevertheless evidence that Mr Mehami was trained in the safe operation in hiring of trailers. I accept that submission. His actions on the day the trailer was hired, as noted above, support that conclusion.

Causation

[53] WorkSafe acknowledged that even if the particulars of the charge had been proven beyond reasonable doubt, it remained necessary for WorkSafe to link any breach of duty by the company to the accident that occurred on 26 February 2021.

[54] A great deal of the evidence in this trial concerned the accident and was provided by experts. I had access to expert evidence from Ms Tina Mitchell-Ellis and Mr Henderson. I did also, of course, have expert evidence provided during the trial from Mr John De Pont and Mr Steve Bullot.

[55] There were clearly multiple causes of the crash and the tragic death of Ashton Maharaj. The experts have different views about the exact combination of causes. That is not surprising in an accident of this nature.

[56] Given the conclusions I have reached as to maintenance and training by the company, it is not strictly necessary for me to reach any view as to causation. I am, nevertheless, of the view that it is appropriate in the circumstances that I do so given the focus on these matters at trial.

[57] In its written submissions WorkSafe submitted that the most reliable and logical explanation of the accident's causes was that of Mr De Pont. What I consider to be an objective summary of his position from his written reports and evidence at trial was set out by WorkSafe. It was:

(a) it is possible that improper load distribution of the ute on the trailer was a factor in the crash. However, there is no clear evidence as to what the load distribution was. The weight of the car parts in the tray of the ute was less than Mr Bullot's initial estimate. While that extra weight could have reduced the load on the towbar, there would still have been some downforce.

(b) the tyre pressures of all four trailer tyres measured after the crash (around 34 psi) were well below recommended levels (65 psi) for the load being carried by the trailer. There was no reason why the tyre pressure measured after the crash should be much different to before. The fact all four tyre pressures after the crash were very similar made it inherently unlikely that they were similarly lowered through damage to the wheels during the crash as Mr Bullot thought. Under-inflation of the trailer tyres would have reduced the cornering stiffness of the tyres by half and so certainly would have reduced the critical speed at which the trailer sway was initiated to around 80 km/hour.

(c) the measurements taken by Mr Henderson of the torque on the trailer wheel nuts are reliable given Mr Henderson's extensive experience and

based on the state of the wheels after the crash. The loosening of the wheel owing to the under-torquing of the wheel nuts was what prevented the driver from regaining control after trailer sway was initiated, leading to the crash.

(d) the reverse interlock braking mechanism may well have been left closed so that the trailer was unbraked. However, it would have had no effect while the vehicles were travelling until the brakes were engaged. Once trailer sway began, assuming the driver only tapped the brakes, it would have had minimal effect. There was little or no evidence of any hard braking or excessive speed.

(e) while one of the straps tying down the ute was broken, assuming the ute was hand braked on the trailer, it would not necessarily have needed strapping (albeit that was a good idea and a legal requirement). The loads on the straps would not have been high. There was no evidence of the ute sliding around on the trailer and no evidence of hard braking before the crash that might have indicated the straps breaking. The most likely scenario is that the strap broke during the roll over because the forces on the strap would have been very high during the process.

(f) although the trailer was overloaded by around 10%, the vehicle was travelling at around 80 km an hour on a good to flat straight road, such that the extra weight is unlikely to have heard a significant influence on the crash. At most, it may have exacerbated the other issues.

[58] As WorkSafe submitted, assessing causation in this case involves determining whether the death of Ashton Maharaj can be said to be a harm resulting from or caused by any offending of the company. This in turn requires determining whether any failure of the company was a substantial operating cause of the accident. A substantial and operative cause does not need to be the main or only cause of death. There may be other, concurrent causes that contribute to the death. An operative cause is one that continues to have effect up until the time of death. The cause must play a role in the death which is not insubstantial or insignificant.

[59] WorkSafe submitted that Mr De Pont was clear that the underinflated tyres and under-torqued wheels were in his view material factors in the accident. It was therefore WorkSafe's submission that poor maintenance would plainly be causative of the accident in a legal sense. While Ashton Maharaj was thrown from the car because he was not properly restrained in his car seat, the accident was what caused him to be thrown.

[60] Mr Bullot's evidence was, of course, different to that of Mr De Pont in two key areas. First on tyre pressure. Second, with respect to wheel nut torque.

[61] As the company submitted in its written submissions, Mr Bullot is a highly experienced engineer and has worked in the light trailer industry developing trailer braking systems and controls. It was his evidence that the post-crash tyre pressure could have been a result of events that occurred during the crash itself and not demonstrative of pre-crash pressures. He pointed to the evidence that all the trailer tyres were damaged in the crash in one manner or another. Tyre pressure could therefore have been lost. He also noted that if the tyres had been under-inflated to the degree suggested, they could have become overheated resulting in a blowout or severe tyre failure. None of that had occurred.

[62] Given the standard to which this charge must be proven, I simply cannot exclude Mr Bullot's view.

[63] The same observation must be made with respect to wheel nut torque. Mr Bullot was adamant in his evidence that the measurement of residual torque undertaken by Mr Henderson, and relied upon by Mr De Pont, could not be relied upon given the method by which he obtained those measurements. Mr Bullot had queried with Mr Henderson why he had measured the torque in the way he had. In a written response Mr Henderson had said to Mr Bullot "I could be wrong but can't these devices be used to measure the amount of torque required?".

[64] I accept the company's written submission that it is a reasonable conclusion from Mr Henderson's response to Mr Bullot, that Mr Henderson was not entirely confident that the tools he used could accurately measure residual torque. Regrettably

Mr Henderson could not, of course, comment upon this. I accept that there must therefore be a doubt as to whether the wheel nuts were under-torqued at all when the trailer was hired to Mr Khan. Once again, given the standard to which this charge must be proven, I simply could not exclude Mr Bullot's point.

[65] I find the charge not proven and the company therefore not guilty.

Judge R McIlraith
District Court Judge