



## STATE CORONER'S COURT OF NEW SOUTH WALES

<b>Inquest:</b>	Inquest into the death Mijin Shin
<b>Hearing dates:</b>	22 & 23 September 2014
<b>Date of findings:</b>	5 November 2014
<b>Place of findings:</b>	State Coroner's Court, Glebe.
<b>Findings of:</b>	Magistrate Sharon Freund, Deputy State Coroner
<b>File numbers:</b>	12/140972
<b>Findings:</b>	I find that Mijin Shin died on 2 May 2012 at Royal North Shore Hospital from Multiple Injuries she sustained as a result of being struck by a bus on the intersection of Hannah Street and Beecroft Road, Beecroft.
<b>Recommendations</b>	<p>The Department of Roads and Maritime Services (RMS)</p> <p>That the RMS consider carrying out a review and assessment of all 2-phase intersections on State roads to prioritise and implement the installation of traffic signal delay phasing so that vehicle traffic be held on a red light while a green walk sign permits pedestrians to leave the footpath unimpeded for a period of time.</p>
<b>Representation:</b>	Sergeant L. Johnston as Advocate Assisting the Coroner; Mr N. Broadbent instructed by Mr S. Hall-Johnston for Mr Vishal Mital, Kelly Hitchman and Meera Shin-Mital; Ms K. Stewart, Special Counsel, Henry Davis York solicitors for the NSW Roads and Maritime Services.

## **FINDINGS**

Mijin Shin was 38 years old when she died of injuries sustained following a collision with a bus at the intersection of Beecroft Road and Hannah Street in Beecroft on 2 May 2012. She is survived by her husband Vishal Mital, and daughters Kelly Hitchman and Meera Shin-Mital.

Mijin was described as a loving and devoted mother with a heart of gold. She was clearly a woman who loved life, her family and friends (whom I was told she collected) and was vivacious, witty and funny.

The role of a Coroner as set out in s. 81 of the *Coroners Act 2009* (“**the Act**”) is to make findings as to:

1. the identity of the deceased;
2. the date and place of a person's death;
3. the physical or medical cause of death; and
4. the manner of death, in other words, the circumstances surrounding the death.

A Coroner, pursuant to s.82 of the Act, also has the power to make recommendations concerning any public health or safety issues arising out of the death in question.

In relation to Mijin's death her identity, date, place and exact cause of her death are not in issue. The only issues that were dealt with in this inquest arose solely out of the circumstances of her death and how she came to be hit by the bus on that afternoon of 2 May 2012, in particular:

1. Was Mijin distracted just prior to the accident?
2. Where was Mijin when she was hit by the bus?
3. Did Mijin activate the pedestrian lights on Hannah Street?
4. Did Mr Wickett, the driver of the bus, see Mijin?

I shall deal with each of the issues in turn.

### **WAS MIJIN DISTRACTED PRIOR TO THE ACCIDENT?**

The only evidence we have of Mijin prior to the accident is from the following sources:

- a) Mr Danby, a teacher on the bus who stated:

*“I was sitting toward the back of the bus, the children...said, ‘Kelly there’s your mum’. I looked and I saw Mrs Hitchman on the right-hand side (which is obviously incorrect) and she...looked like she was walking toward the bus”<sup>1</sup>.*

- b) The CCTV footage from the back of the bus where Mijin is seen at the intersection of Beecroft Road and Hannah Street, starting to walk across the pedestrian crossing.

The brief in this matter was extensive. There is no other reference to Mijin waving or behaving in a way prior to the accident that would indicate that she was distracted. In fact the evidence was to the contrary namely she was walking straight across the road and was not waving at the bus<sup>2</sup>.

### **WHERE WAS MIJIN WHEN SHE WAS HIT BY THE BUS?**

Numerous witnesses were interviewed following the incident. The three who observed the actual collision were called to give evidence at the inquest namely Mr Salvatore Agostino, Mr Edmond Esho and Ms Maya Viranna.

Despite each witness doing their best to assist the inquest as to what occurred that afternoon, there were a number of marked discrepancies in their versions. Accordingly I will detail the evidence of each:

#### Salvatore Agostino

It was the evidence of Mr Agostino inter alia that:

1. He was in his car in lane two next to the bus at the traffic lights;
2. He did not see Mijin until she “popped out” in front of the bus which was in the process of making the left hand turn;
3. He had only seen her for a short time before she was struck and during this time she was walking southbound in a straight line and she was not waving or distracted;
4. At the time Mijin was struck there was an object appearing to be flung from where Ms Shin was; at this time he did not realise that it was a baby;
5. After seeing Mijin being struck he honked his horn and pulled his car over in the middle of the intersection and ran down the side of the bus screaming and banging on the window to alert the driver;
6. At this stage the bus was “rolling” and Mijin was under the bus;
7. He then picked up Meera, Mijin’s baby daughter from where she landed on the roadway after being flung out of harm’s way by Mijin;

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<sup>1</sup> Exhibit 1, Tab 25, A11;

<sup>2</sup> Oral evidence of Mr Agostino 22/09/14;

During the course of cross examination, Mr Agostino gave evidence that Mijin was hit by the right hand corner of the bus. This however does not accord with any other evidence.

#### Mr Edmond Esho

The evidence of Mr Esho can be summarised as follows:

1. He was stopped at the lights heading north bound on Beecroft Road waiting to turn right onto Hannah Street;
2. He observed Mijin walk one or two steps onto the intersection before being struck by the bus;

#### Ms Maya Viranna

Ms Viranna's evidence was inter alia that:

1. She was driving her motor vehicle westbound on Hannah Street towards the intersection, having just picked up her grandchildren from Arden Street Public School;
2. She had never driven that street before but had walked it a number of times;
3. She was the first car in traffic but stopped her car approximately two metres short of the intersection as she saw the bus turning left into Hannah street and wanted to give it room to make the turn;
4. She saw Mijin step of the curb at some point further down the road, east of the intersection. At the time Mijin was struck by the bus, the bus was "already beginning to straighten up";

The actual mechanics of the turn was subject to the expert of evidence of Owen Johnstone, the Transport Safety Investigator with the NSW office of Transport Safety Investigations, who, using the data obtained from the careful review of the CCTV from inside the bus prior to the accident was able to re-enact the position of the bus at the time of the accident and determine the point at which Mijin was struck.

It was the evidence of Mr Johnstone that he viewed the CCTV and was able to identify Ms Shin, as she appears to be carrying a small child. Moreover, the view from the CCTV from the rear of the bus would be subject to some parallax error which would have the effect of placing Mijin at a point further towards the front of the bus.

Mr Johnstone's evidence was that:

- a) Mijin was walking within the pedestrian crossing lines;
- b) Mijin was walking at a steady/ moderate pace; and
- c) Mijin was on the Eastern edge of the crossing

- d) Drag marks and blood spots indicate that the bus collided with her at about the middle of the road;

Unfortunately, as indicated earlier in these findings, each of the eye witnesses place Mijin at different locations within the intersection at the time she was struck by the bus. The only evidence before me which was unaffected by the stress of the events that unfolded that afternoon is that of Mr Johnstone. Accordingly, I am satisfied on the balance of probabilities that Mijin was walking across the intersection in a straight line, within the markings of the pedestrian crossings (towards the eastern side of the crossing), and was struck at some point around the middle of Hannah Street.

### **DID MIJIN ACTIVATE THE PEDESTRIAN LIGHTS ON HANNAH STREET?**

There was no evidence before this inquest as to whether Mijin pressed the button which would have activated the green pedestrian walk light prior to her crossing the road. Furthermore, there is no evidence in the brief that the pedestrian walk sign was green at the time of the accident, yet I also note that there was no evidence to say that it was not green.

There was however, evidence that Mijin was, at all times, a very prudent and cautious woman who was mindful to cross roads at pedestrian crossing and to press the pedestrian button and wait for it to turn green. She had often chastised her husband for being impatient and for not wanting to wait for the pedestrian green signal at that very same intersection. Moreover, at the time of the collision Mijin was carrying her young child, Meera. Her walking speed was a steady moderate pace, so clearly she was not rushed, and it was therefore unlikely she simply dashed across the road in the hope of avoiding traffic.

Accordingly, on the balance of probabilities I am satisfied that Mijin had pressed the pedestrian button and that she was walking with the green pedestrian walk signal.

### **DID MR WICKETT, THE DRIVER OF THE BUS SEE MIJIN?**

Mr Wickett gave evidence on the final day of the hearing. He was adamant that he never saw Mijin prior to feeling a bump that caused the front doors of his vehicle to open slightly. This was consistent with all versions given by him. I found Mr Wickett to be an honest and forthright witness and ultimately a witness of truth.

It is clear that Mr Wicket never saw Mijin prior to or after she began to cross Hannah street, or at any time prior to the accident.

He did however accept in cross examination by Mr Broadbent, Counsel for the family, that at the time he was making the left hand turn he was considering a number of factors including:

1. That there were a number of obstacles in relation to the turn;
2. That there was a black SUV parked close to the intersection which he needed to navigate in order to successfully make the turn;
3. There was a car approaching the intersection in a westbound lane of Hannah Street, which I now accept to be the vehicle being driven by Ms Viranna, whom he signaled to stop so he could make the turn;

I also had the compelling evidence from Owen Johnstone in relation to Mijin being obscured by the A-pillar of the bus. When this scenario was put to Mr Wickett he refused to accept it, but on balance of probabilities it is the only scenario that makes sense. Mijin, who was only 155cm in height, was walking at a steady moderate pace. On the evidence before me, it was a pace not dissimilar to the speed of the bus Mr Wickett was driving. In those circumstances as they unfolded that fatal afternoon, Mijin found herself walking within the blind spot caused by the A-pillar of the bus. That, coupled with the number of distractions on which Mr Wickett had to focus on in order to successfully make the left hand turn, resulted in Mijin being knocked down and run over by the bus as it turned the corner, as she was in effect at all times in the moving blind spot of the A-Pillar.

This was an awful and tragic turn of events where Mijin was simply at the wrong place at the wrong time.

## RECOMMENDATIONS

Section 82 of the Coroners Act states:

*"A coroner (whether or not there is a jury) or a jury may make such recommendations as the coroner or jury considers necessary or desirable to make in relation to any matter connected with the death, suspected death, fire or explosion with which an inquest or inquiry is concerned".*

Mr Broadbent, Counsel for the family and Sergeant Johnston, the Advocate Assisting the Coroner proposed a number recommendations to enhance public safety, namely:

1. At a minimum, all turns of this nature which were located in major pedestrian intersections, contain signs warning drivers to give way to pedestrians ("the sign recommendation");
2. A green light and/or a left hand turn arrow be installed in all busy intersections ("the arrow recommendation");

3. Phasing of the lights at busy intersections be changed to introduce a delay before the vehicle traffic is released to ensure that pedestrians are able to move from, and stay out of, a vehicle's blind spot ("the phasing recommendation"); and
4. That buses not be permitted to travel down Hannah Street and that Chapman Street be used as an alternative route ("the no buses on Hannah Street recommendation");

I will deal with each of the proposed recommendations in turn.

The sign recommendation:

This recommendation was made for the first time during the course of submissions by the family. There is no evidence before me to indicate that such signage would have any deterrent effect. Moreover, the current driving rules provide that drivers must give way to pedestrians the signs would merely be a repetition of the existing legal obligation imposed on all drivers of NSW.

Finally, as I indicated during the course of this oral submission, too many signs may result in drivers being further distracted, or inundated and therefore over-stimulated and less likely to pay attention.

Accordingly, I will not be making this proposed recommendation.

The arrow recommendation:

It was submitted by the RMS that if a red turn signal was included on a 2-phase traffic signal site, then for almost every intersection on a 2 phase system, a red right-hand-turn arrow would need to be included for drivers on the adjacent road in order to prevent the creation of an additional traffic hazard. Therefore, this would require additional display lanterns and additional wiring at a minimum cost of approximately \$125,000 per intersection.

I accept that the cost of an upgrade in this regard is prohibitive and accordingly decline to make such a recommendation in the circumstances.

The phasing recommendation:

This change was made at the intersection of Hannah Street and Beecroft Road, after it was reassessed by the RMS following the death of Mijin.

RMS has submitted that a recommendation in this regard should not be made for the following reasons, which I have sought to summarise:

1. That every time that phasing of traffic signals is altered there is an impact on traffic flow. The impact on the traffic flow will depend on how busy the intersection is. This could have a negative impact on road users;
2. If the recommendation was adopted the RMS would need to review, model and test the software for each intersection prior to installation and thereafter the intersection would have to be monitored to ensure it was running in accordance with the model. In short, it is not a simple software redesign for all intersections they would have to be tailored to each individual site;
3. It would take RMS approximately 3 years to complete the upgrade over 767 sites over NSW; and
4. The approximate cost per site is \$6,500 and a total cost for the work across NSW of approximately \$5,000,000.

At first blush the submissions advanced by RMS are persuasive. However, in my view the safety of pedestrians is paramount. A pedestrian, particularly a child or a smaller person like Mijin being caught in a moving blind spot of a larger vehicle like a bus or truck (or the now common SUV's and four wheel drives) can clearly, as demonstrated here, have tragic and irreversible consequences. Accordingly, I am minded to make such a recommendation.

The no buses on Hannah Street recommendation:

This recommendation was made for the first time during the course of submissions by the family. Hannah Street is a local road and therefore under the care and control of Hornsby Shire Council. They have not had the opportunity to respond to the proposed recommendation.

I note however that the evidence indicates that the bus that collided with Mijin was not supposed to take this route. It did so because the bus it was following had difficulties and "got stuck" navigating the left hand turn on the intersection of Beecroft Road and Chapman Avenue. On the advice of a teacher aboard the bus, Mr. Wicket proceeded to the next intersection, namely Hannah Street, to make the left hand turn, with tragic consequence.

There is no doubt the intersection of Hannah Street and Beecroft Road is a busy intersection. Upgrades to the safety mechanisms that control this intersection have been made by Roads and Maritime Services. There is no evidence before me that suggests banning buses on Hannah Street would make this intersection any safer. Accordingly, I decline to make such a recommendation.



Accordingly, I now turn to the findings I am required to make pursuant to section 81 of the Coroners Act 2009.

I find that Mijin Shin died on 2 May 2012 at Royal North Shore Hospital from Multiple Injuries she sustained as a result of being struck by a bus on the intersection of Hannah Street and Beecroft Road, Beecroft.

For the reasons set out in these findings I make the following recommendations pursuant to section 82 of the Coroners Act 2009:

To:

The Department of Roads and Maritime Services (RMS)

That the RMS consider carrying out a review and assessment of all 2-phase intersections on State roads to prioritise and implement the installation of traffic signal delay phasing so that vehicle traffic be held on a red light while a green walk sign permits pedestrians to leave the footpath unimpeded for a period of time.

5 November 2014

Magistrate Sharon Freund

Deputy State Coroner