

[10] The Commissioner pointed out that the evidence of the police officers as to how death occurred was hearsay and inadmissible. The police officer who found the deceased was not called to give evidence. The doctor's evidence, reliant as it was on inadmissible evidence, took the matter no further.

[11] The Commissioner acknowledged that the evidence of the belt mark must be accepted. The plaintiff's evidence on the issue survived persistent cross-examination and that of the deceased's wife and brother was unchallenged. (They were not called for cross-examination). However, the Commissioner found that the mark seen on the deceased's neck could have had other causes. It was not in itself sufficient to support an inference that someone had entered the deceased's cell and strangled him to death with his belt.

[12] In the absence of proof of how death occurred the Commissioner was unable to uphold either the allegation that the police had failed to keep the deceased safe from harm caused by others or from harming himself. The claim was accordingly dismissed.

Grounds of Appeal

[13] In his notice of appeal the appellant relied on two grounds (which we paraphrase):

- The High Court erred in finding that there could be explanations for the mark on the deceased's neck other than its being caused by strangulation with his belt.
- The High Court erred in finding that the police were not negligent in leaving the deceased on his own.

detainees should be visited at least every hour and those suspected of being under the influence of drink or drugs visited and roused at least every half hour.

[22] These guidelines confirm that, unless alerted by indications that a prisoner faces special risks of self-harm or harm from another, even an intoxicated prisoner does not require constant surveillance. In our view there is nothing in the circumstances of the case that could have required the police to maintain constant surveillance of the deceased. To leave him unobserved for a period of ten minutes could not be considered a breach of the duty of care owed.

[23] We agree with the Commissioner's conclusion that the police have not been shown to have been negligent.

Result

[24] The appeal is dismissed. The appellant must pay costs to be agreed or taxed by the Registrar.



Blanchard JA



Handley JA



Hansen JA