

BARBADOS
[Unreported]

IN THE SUPREME COURT OF JUDICATURE
HIGH COURT

CIVIL JURISDICTION

No. 660 of 2000

BETWEEN:

ALTHEA STRICKLAND

**(The mother and Administratrix
of the Estate of Rodney MacAnthony
Strickland, deceased)**

Plaintiff

AND

DARRIN WHITE

THE BARBADOS RALLY CLUB

**First Defendant
Fourth Defendant**

Before the Honourable Madam Justice Elneth O. Kentish, Judge of the High Court.

2004: June 2, 3, 10

2007: November 13, 19

2012: November 9

Mr. Adrian King in association with Ms. Wendy Maraj for the Plaintiff.

Mr. Patterson K. Cheltenham, Q.C. in association with Mr. Alrick Scott for the First and Fourth Defendants.

DECISION

The Parties

- [1] The plaintiff, Althea Strickland, (“Strickland”), is the mother and administratrix of the estate of Rodney MacAnthony Strickland, deceased, her son (“the deceased”) who died on the 16 June 1997 as a result of injuries he sustained on the 6 April 1997, when he was struck by a motor vehicle G2223 driven by the first defendant, Darrin White, at a rally event organised and sponsored by the fourth defendant. The deceased was one of many spectators who attended that fateful rally.
- [2] Pursuant to an order of the court made 1 June 2004, the second and third defendants ceased to be parties to the action by virtue of the amended writ of summons and amended statement of claim filed on 3 June 2004.
- [3] The fourth defendant, the Barbados Rally Club (“the Club”) is a non-profit organisation incorporated under the provisions of the Companies Act, Cap. 308 of the Laws of Barbados with its registered office at Bushy Park in the parish of St. Philip in this Island. It organises and sponsors motor racing in Barbados. The Club invites its members to participate in its events.

Nature of Action

- [4] Strickland's action is founded in negligence arising out of the incident on 6 April 1997 earlier referred to. In the action she claims damages for herself and other dependants of the deceased and for bereavement under the **Accident Compensation (Law Reform) Act, Cap. 193A**; damages for the estate of the deceased under **the Law Reform (Miscellaneous Provisions) Act, Cap. 205** of the Laws of Barbados, interest and costs.

Background

- [5] On 6 April 1997, the Club having obtained the requisite permission from the Ministry of Transport and Works to close certain roads to be used for four events and an acceleration test, held its third speed event ("the rally"). (See Exhibit "FG3" and Exhibit "FG4" admitted by consent)
- [6] Darrin White as a member of the Club was admitted to participate in the rally. He completed the requisite form in accordance with Rule 55 of the **General Competition Rules** of the Club (See Exhibit "DW1"). By doing so he agreed to be a contestant on the terms and conditions set out in the form and to be bound by any rules and regulations subsequently announced by the organising committee.
- [7] Darrin White made three runs on the course. The first and second runs were completed without incident. During his third run, as he entered the right hand bend at Swampy Town approaching the intersection or junction of Trents, Hannays, Friendship and Mount Poyer, he picked up a skid and lost control of the vehicle. As a result the vehicle crossed the road on its right, mounting an embankment on the opposite side of the road, travelling through some shrubs, hitting some of the spectators standing on that embankment, turning over and landing upside down in the road.
- [8] Strickland's son was among the injured spectators and later succumbed to his injuries.
- [9] The photographs admitted into evidence as Exhibits "CH1" to "CH6" provide a graphic picture of the vehicle from the time it picked up the skid to the time it landed upside down in the road.

The Pleadings

- [10] On 24 March 2000 Strickland commenced this action by a writ of summons and statement of claim. On 3 June 2004 an amended writ of summons and statement of claim were filed with leave of the court. Subsequently, and also with leave of the court, an amended defence was filed on behalf of the first, second and fourth defendants. However, by its amended writ of summons and statement of claim the second and third defendants were removed as defendants. The action therefore continued as against Darrin White and the Club, the first and fourth defendants respectively.

Issues

- [11] On the basis of the pleadings the issues which arise for determination by the court may be framed as follows:
- (i) Is Darrin White as the driver of the vehicle liable in negligence for the death of Strickland's son?

- (ii) Is the Club as the promoter and organiser of the rally at which Strickland's son met his untimely death liable in negligence? and
- (iii) Can either Darrin White or the Club avoid liability either on the basis (a) of the warning sign displayed by the Club on barriers along the course or (b) that Strickland's son was wholly or partially responsible for his own death.

- [12] This action is founded solely in negligence the essential elements of which are
- (i) a duty of care owed to Strickland's son by Darrin White and the Club respectively;
 - (ii) a breach of that duty; and
 - (iii) damages suffered by Strickland's son which flow naturally from that breach.

- [13] The duty of care as formulated by **Lord Esher (then Brent MR)** in **Heaven v Pender (1883) 1 QBD 503** and adopted and approved by **Lord Atkin** in the celebrated case of **Donoghue v Stevenson [1932] AC 562, 580** and known as the neighbour principle requires that:

“...you must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be - persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called into question.”

- [14] It is not in dispute that spectators at the rally on 6 April 1997 and in particular Strickland's son were owed a duty of care by both Darrin White and the Club within the formulation of the neighbour principle.

- [15] What is in dispute is the scope of that duty and whether it was breached.

Issue (i) – Liability of Darrin White

In her amended statement of claim Strickland alleges that the accident which led to the death of her son was caused solely by the negligence of Darrin White. Particulars pleaded of that negligence are:

- i. Driving too fast;
- ii. Failing to exercise adequate skill;
- iii. Failing to keep any or any proper look out;
- iv. Failing to see the deceased in sufficient time to avoid colliding with him or at all;
- v. Driving off the track and in to the crowd of spectators;
- vi. Colliding with the deceased;
- vii. Failing to stop, to slow down, to swerve or in any other way so to manage or control his vehicle as to avoid the said collision; and

- viii. Exposing the deceased to a risk of injury of which he knew or ought to have known.

It was also pleaded that Strickland would rely on the doctrine of *res ipsa loquitur*.

- [16] Counsel for the plaintiff contended that the test for determining the scope of that duty is to be found in **Wilks v Cheltenham Cycle Club [1971] 2 ALL ER at 370** where **Lord Denning MR** as he then was, said:

“Let me first try to state the duty which lies upon a competitor in a race. He must, of course, use reasonable care. But that means reasonable care having regard to the fact that he is a competitor in a race in which he is expected to go ‘all out’ to win. Take a batsman at the wicket. He is expected to hit six, if he can, even if it lands among the spectators. So also in a race, a competitor is expected to go as fast as he can, so long as he is not foolhardy. In seeing if a man is negligent, you ask what a reasonable man in his place would or would not do. In a race a reasonable man would do everything he could to win, but he would not be foolhardy. That, I think, is the standard of care to be expected of him...In a race a rider is, I think, liable if his conduct is such as to evince a reckless disregard of the spectator’s safety; in other words if his conduct is foolhardy”.

- [17] Counsel urged the court to accept the **Wilks** test which was considered and applied in the Canadian case **Keough v Royal Canadian Legion Henderson Highway Branch 215 (1977) 80 D.L.R. (3d) 326** in which **Nitikman J** at para 25 of the judgment stated:

“The injuries occasioned the infant Plaintiff were caused directly by the negligent operation of the snowmobile by the Defendant Thomas. I recognize that mere driving a snowmobile at a high rate of speed is in itself not negligence. The purpose of each contestant in a race is to finish first and all due allowance must be made for the manner in which the contestant operates his vehicle with that in mind. But in this case, the driving of Thomas went far beyond what can be described as proper. He was aware the area surrounding the track on the north straightaway was not sufficiently protective against spectators, being guarded only by a rope barrier. He should have avoided proximity to that area and should so have operated his snowmobile that, regardless of skidding or sliding that might follow his attempt to make the fastest time, he would not hit the unprotected area. But instead, he deliberately drove his snowmobile too close to the improperly protected area, at the same time purposely putting his vehicle into a slide or skid. He knew or should have known that he might, by reason thereof, lose control of the snowmobile, as indeed he did,

and in the result could run into and through the rope barrier, causing injuries to spectators in that area.”

- [18] On the other hand Counsel for the Club contended that the correct test is that enunciated by **Sellers LJ** in **Wooldridge v Sumner and Another [1963] 2 QB 43 at 56-57 letter g** in this way:

“... the spectator comes to witness skill and with the expectation that it will be exercised. But, provided the competition or the game is being performed within the rules and the requirement of the sport and by a person of adequate skill and competence the spectator does not expect his safety to be regarded by the participant.

If the conduct is deliberately intended to injure someone whose presence is known, or is reckless and in disregard of all safety of others so that it is a departure from the standard which might reasonably be expected in anyone pursuing the competition or game, then the performer might well be held liable for any injury his act caused. There would, I think, be a difference, for instance, in assessing blame which is actionable between an injury caused by a tennis ball hit or a racket accidentally thrown in the course of play into the spectators at Wimbledon and a ball or racket thrown into the stands in temper or annoyance when play was not in progress. (Emphasis supplied)

The relationship of spectator and competitor or player is a special one, as I see it, as the standard of conduct of the participant as accepted and expected by the testator, is that which the sport permits or involves. The different relationship involves its own standard of care”.

- [19] Counsel for the Club submitted that the test advanced by Strickland’s Counsel is taken from the judgment of **Lord Edmund Davies in Wilks at p 374 (letters b to d)** where having noted that he shared the difficulty of **Lord Denning MR** in accepting the view there expressed that a competitor in such events is to be held liable only if he acts in reckless disregard of the spectators’ safety, stated:

“For my part, I would with deference adopt the view of **Dr. Goodhart in 78 L.Q.R. [at p.496]** that the proper test is whether injury to a spectator has been caused ‘by an error of judgment that a reasonable competitor, being the reasonable man of the sporting world, would not have made.’”

- [20] Further, Counsel for the Club pointed out that in **Wilks** itself **Philimore LJ** confessed that he was attracted to the test propounded by **Sellers LJ** in **Wooldridge**.

- [21] Any doubt, Counsel submitted, as to the correct test to be applied, must be regarded as resolved by the Court of Appeal in **Blake v Galloway [2004] 1 WLR 2844** where **Wooldridge's** case was expressly applied by **Dyson LJ** who stated at 2850 to 2851:
- “I would, therefore, apply the guidance given by **Diplock LJ** in **Wooldridge v Sumner [1963] 2 QB 43**, although in a slightly expanded form, and hold that in a case such as the present there is a breach of the duty of care owed by participant A to participant B only where A's conduct amounts to recklessness or a very high degree of carelessness”.
- [22] Indeed, it is to be noted that although **Wilks** was cited in argument, in **Blake** it was not referred to in the course of the judgment.
- [23] In **Blake v Galloway** at issue was the standard of care required of participants in horseplay. Referring to **Wooldridge v Sumner** at para 8 **Dyson LJ** observed:
- “Although that was a case about a spectator, and not a participant, it is clear that the observations made by this court, and in particular by **Diplock LJ at p 67** are of application to spectators and participants alike”.
- [24] And **Dyson LJ** approved the analysis of **Diplock LJ at p 68 of Wooldridge** that:
- “The practical result of this analysis of the common law of negligence to participant and spectator would, I think, be expressed by the common man in some such terms as these: ‘A person attending a game or competition takes the risk of any damage caused to him by any act of a participant done in the course of and for the purposes of the game or competition notwithstanding that any such act may involve an error of judgment or lapse of skill, unless the participant's conduct is such as to evince a reckless disregard of the spectator's safety.’”
- [25] Finally, in **Caldwell v Maguire [2002] P.I.Q.R 45 at 47-48** the Court of Appeal approved the five propositions set out below, extracted by the trial judge **Holland J (unreported) 30 September 1994** having reviewed some of the authorities (including **Wooldridge v Sumner [1963] 2 QB 43** and **Condon v Basi [1985] 1 WLR 866**):
- (1) Each contestant in a lawful sporting contest (and in particular a race) owes a duty of care to each and all other contestants.
 - (2) That duty is to exercise all care that is objectively reasonable in the prevailing circumstances for the avoidance of infliction of injury to fellow contestants.
 - (3) The prevailing circumstances are all such properly attendant upon the contest and include its object, the demands inevitably made upon its contestants, its inherent

dangers (if any), its rules, conventions and customs, and the standards, skills and judgment reasonably to be expected of a contestant.

...

- (4) *Given the nature of such prevailing circumstances the threshold for liability is in practice inevitably high; the proof of a breach of duty will not flow from proof of no more than an error of judgment or from mere proof of a momentary lapse in skill (and thus care) respectively when subject to the stresses of a race. Such are no more than incidents inherent in the nature of the sport.*
- (5) *In practice it may therefore be difficult to prove any such breach of duty absent proof of conduct that in point of fact amounts to reckless disregard for the fellow contestant's safety. I emphasise the distinction between the expression of legal principle and the practicalities of the evidential burden.” (Emphasis supplied).*

- [26] Reviewing the authorities cited by Counsel on both sides, I am satisfied that the proper test to be applied in determining the scope of the duty of care owed by Darrin White to Strickland’s son is that advanced in **Wooldridge** by **Sellers J** as expanded in **Blake v Galloway** by **Dyson LJ**.
- [27] To my mind that expanded test is whether the conduct of Darrin White amounted to recklessness in disregard of the safety of others or a very high degree of carelessness so that it was a departure from the standard which might reasonably be expected in anyone pursuing the competition or game.

Was there a breach of Darrin White’s duty of care?

- [28] To determine whether there was a breach of Darrin White’s duty of care, a careful examination of the evidence is required.
- [29] The evidence shows that Darrin White became a licensed driver from 1987 and a member of the Club from 1989. He had competed in more than 20 rallies. He considered himself an experienced rally driver and it was not suggested to him that he was inexperienced. Accordingly, I find that he was, at the date of the accident on 6 April 1997 an experienced rally driver.
- [30] On that day he entered a speed event sponsored by the Club in Group I Class II in a Mitsubishi Colt registration number G2223, a standard production to which there were no modifications as to horsepower, but to which upgraded suspension, rim tyres, roll cage, fire extinguishers, seats and seat belts were added.
- [31] His entry was in keeping with the **General Competition Rules** of the Barbados Rally Club and the **Additional Supplementary Regulations** for the 3rd of the series of Speed Events in the Automotive Art Championship for 1997. He and his car were checked at the beginning of the event by the official scrutineer for safety:

- mainly the steering, battery, brakes, wearing of racing suits and helmets. And there is no suggestion that his car was unsafe.
- [32] He arrived at Bourbon, the point at which the rally was to start at 6.30 a.m. He explained that there is one practice run to enable participants to familiarise themselves with the course and the conditions of the course. After the practice run, participants do three official runs and the fastest time of the three counts overall. The practice run was scheduled to start at 8.00 a.m. The course, he stated, was possibly two miles.
- [33] In the practice run he stated that he did not experience any particular challenges. The course was slightly damp from dew and when he approached the junction he observed about three persons crossing the road. He came off the accelerator and allowed them to cross.
- [34] Darrin White then did his first official run. He stated there were no problems. It was a clean run.
- [35] He started his second official run at about 10:30 a.m. having gotten the all clear and go ahead from the marshal. He accelerated off the start line and along the course until he got into the right hand bend at Swampy Town approaching the four-cross junction. In that corner the rear of the car started to slide to the left. He sought to regain control of the car by steering counterclockwise but then the back left wheel slid into the grass on the left hand side. He tried to keep the car on the road but lost total control. He explained that in racing terms the corner he came through would be described as a very fast right hand corner. If it were a 90 bend it would be referred to as a slow right 90 meaning that it is a sharp corner you would have to slow down for. There was, he said, a loss of traction when the car skidded at the rear and he sought to correct that by 'opposite locking'. That manoeuvre he had had to use many times before when he had lost traction. At that time he was travelling at a speed of about 90 to 110 kilometres and was aware that it was a junction point where spectators were assembled.
- [36] Having lost control, the car travelled over to the right hand side of the road, through some trees on that side and into the spectators. It was after he passed the trees that he realised that he had struck some spectators behind the trees. The car then landed on the front left side rolled over on to the roof and came to a stop. All this, he stated, occurred in split seconds. Shown the photograph in Exhibit "CH1" he said that shows his car which at that point is coming back onto the road and just coming out of the right hand bend which he had just travelled. Exhibit "CH2" he stated, shows the car going over to the right hand side of the road into the trees he mentioned. Exhibit "CH3" shows the car striking the spectators.
- [37] Under cross-examination Darrin White testified that the rally was a speed event in which the person who clocked the best time from start to finish is the winner of the event.
- [38] The practice run is not timed and that is the difference between the practice run and the official run. Shown Exhibit "CH1" he said that is the corner where the car started to skid and he considered it a blind corner. He testified that the car picked up that skid approximately 6 to 8 feet before the point where the car is shown in Exhibit "CH1". He could not say exactly what caused the skid but he recalled that the car slid onto the edge of the grass before he picked up the skid.

- [39] As the back left wheel of the car skidded he turned the steering wheel counterclockwise to the left and with that the car continued sliding to the left. It started to straighten up somewhat but not quickly enough, hence the movement towards the right across the road as seen in Exhibit "CH1". Looking at Exhibit "CH1", the wheels are turned to the left in the counterclockwise manoeuvre. He agreed that at that point all four wheels were on the road.
- [40] Still under cross-examination, Darrin White stated that in racing language that corner is a sharp right corner and in a speed event you would brake before you got to a sharp right corner. He explained that whether you brake in a fast right corner depends on the speed you are currently doing and on the road conditions. Braking is not absolutely necessary in a fast right because it is a bend. He agreed that because it is a corner there is a change of skidding.
- [41] Darrin White further testified under cross-examination that when he picked up the skid and did the manoeuvre it was his intention to get back on the road and complete the race. At that point he was maintaining the speed of 90 to 110 kilometres he was travelling at, as he approached the bend. When he was going around the corner in the official second run, he was focussed on driving and watching the road. Subconsciously it was in his mind that he had seen persons crossing the road in his preliminary run, but when he saw them they were about 150 feet away. However, that had no effect on how he took the corner as he had a first official run which was clear.
- [42] He knew, he stated, under cross-examination that there were spectators at the four-cross road. He explained that he would exercise greater caution when he knows that there are spectators. To quote his evidence –
"Coming out of the corner I did not exercise that caution on that day. This caution is exercised when you are arriving at a corner when you can see that spectators are close. Moreover, the spectators were not visible to me until I lost control of the vehicle. I knew that at the four-cross road there were spectators. At this point I could not see spectators on my right as there were trees blocking my view."
- [43] Shown Exhibit "CH2" he testified that he was aware there were spectators on the embankment not shown in Exhibit "CH2" and on the opposite embankment where the bicycle handle is shown. However, he was not aware of spectators on the embankment where the car and persons are seen because those persons were on his right hidden by the trees and he was looking straight ahead. He did not recall seeing spectators on the embankment where the accident occurred during his preliminary run.
- [44] Under further cross-examination Darrin White testified when shown Exhibit "CH2" that there was a split second between Exhibit "CH1" and Exhibit "CH2". He was not applying brakes in between Exhibit "CH1" and Exhibit "CH2". In Exhibit "CH1" his foot was on the accelerator. He could see the junction from that point but between Exhibit "CH1" and Exhibit "CH2" he did not have time to apply brakes as it happened so fast. He was not sure, he said, that applying brakes at that time would have helped. He did not consider he had made an error in not

applying the brakes at that time as he did not believe it would have helped the situation. He disagreed with the suggestion that he drove around the corner in a reckless fashion. He also did not accept the suggestion that he had no regard for the presence of spectators at the four-cross road during his preliminary and official runs.

- [45] Re-examined, Darrin White stated that it would have taken approximately 1/10th of a second to drive from Exhibit “CH1” to Exhibit “CH2”. The purpose, he testified, of the manoeuvre was to try to keep the car under control but he did not succeed. The car, he stated, went off the road on the grass because the rear wheel did. When he went on the grass, as the car is a front wheel drive, he went into the manoeuvre with some acceleration still applied and he was able to keep the front of the car in the road up to Exhibit “CH1”. He did not consider the Swampy Town bend to be dangerous. The distance from where the car is in Exhibit “CH1” to the junction where the spectators are seen in Exhibit “CH2” is about 40 feet.

Submissions of Counsel

- [46] Counsel for the Plaintiff submitted that Darrin White was in breach of the duty of care owed to the Stricklands’ son. The evidence, he submitted, clearly shows that Darrin White had knowledge of the presence of spectators at an area on the course in close proximity to a bend where it was reasonable to assume that a skilled driver could lose control of his vehicle. The evidence, Counsel submitted, shows that he was negligent in that he failed to take any or any adequate precautions to manage or control the vehicle in such a manner as to prevent it from leaving the track and colliding with the spectators.
- [47] Counsel for Strickland contended further that the evidence shows that Darrin White did not exercise any caution when approaching the bend, but rather elected not to apply his brakes.
- [48] On the other hand, Counsel for Darrin White submitted that Strickland failed to establish any recklessness or such a high degree of carelessness on the part of Darrin White for which he should be held liable and that the action should be dismissed.
- [49] As I have found earlier, Darrin White was an experienced rally driver. And it was not suggested to him that he was an unskilled competitor. So the question is whether Darrin White was driving at such an excessive rate of speed as he approached that corner that his conduct amounted to recklessness in disregard of the safety of the spectators at that four-cross road junction or to a high degree of carelessness.
- [50] I am mindful that in applying the test of **Diplock J** in **Wooldridge** as expanded by **Dyson LJ** in **Blake**, I must consider, in the words of **Holland J**, all “the prevailing circumstances...attendant upon the contest” as embedded in proposition (3) cited and approved by **Dyson LJ** in **Blake v Galloway** at p 2850 earlier referred to at para [25].
- [51] The first circumstance is that Darrin White was engaged in the competitive sport of motor racing. This was a speed event. By its very nature it demanded each competitor to drive at a high speed to obtain the best time over three official runs and so be declared the winner. The lure of spectators to the sport is its fast driving.

- [52] In the words of **Sellers J** in **Wooldridge** at p 56 “...the spectator comes to witness skill and with the expectation that it will be exercised”. That is the demand made upon the contestants, a second circumstance to be considered.
- [53] A third circumstance for consideration is the danger inherent in the contest. It is accepted that motor sport is dangerous and the dangers reside within the competitive nature of the sport where the emphasis is on the speed and skill of the competitors each vying to be the winner. In the heat of the race, therefore, errors of judgment or momentary lapses of skill, in the language of the cases, are likely to be made.
- [54] Counsel for Strickland relies on the testimony of Darrin White in cross-examination that approaching a blind sharp right-corner he was maintaining a speed of about 90 to 100 kilometres; was not braking and did not exercise a great degree of caution, aware, as he was, of spectators at the four-cross road as evincing a reckless disregard for the spectators.
- [55] But Darrin White, in chief, explained that in racing terms that corner would be a very fast right hand corner. If it were a 90° bend it would be referred to as a slow right 90 meaning it is a very sharp corner that you have to slow for. What he came through was a fast right hand bend.
- [56] So it seems to me that his testimony in cross-examination that and I quote:
 “When going around the corner in the official second run I was ... focused on driving and watching the road; the focus was on speed...”
- fits entirely with what the sport allowed and expected of a competitor going around a fast right hand corner. Moreover, Darrin White explained that he did not exercise the degree of caution he would when coming out of a corner when he knows there are spectators, because that caution is exercised when you see spectators on arriving at a corner.
- [57] On that day, he stated, he could not see spectators on his right as there were trees blocking his view. Indeed Exhibit “CH2” supports his testimony that trees would have obscured his view of those spectators on the embankment where the accident occurred. In this regard his testimony is borne out by that of Pedro Hinds who stated that he did not see the car coming out of the corner when it began to skid. The tree in Exhibit “CH2”, the branches of which are over the car, was blocking his vision. I accept the testimony of Darrin White that he did not see those spectators either arriving at or coming out of that corner. No blame can therefore be attributed to him for not slowing his speed.
- [58] In her amended statement of claim Strickland pleaded that Darrin White was driving too fast in the circumstances. No evidence was led to substantiate this pleading given that Darrin White was competing in an event, the object of which was speeding to win. Moreover, in **Wooldridge, Sellers LJ** at p 53 expressed the opinion that “too fast” would only be an error of judgment of a highly competent rider all out to succeed.
- [59] The fourth and final circumstance for consideration is the rules, conventions and customs, and the standards, skills and judgment reasonably to be expected of a contestant. Darrin White could not explain why he picked up the skid, but

skidding is accepted as part of that sport. However, he explained the “opposite locking” manoeuvre that he attempted to correct the skid as shown in Exhibit “CH1”, and it was not suggested to him that that manoeuvre was inappropriate or lacking in skill or judgment.

[60] Does the failure of Darrin White to apply brakes in what is clearly a short distance between Exhibit “CH1” and Exhibit “CH2” given the speed at which he was travelling imply that his conduct was reckless and in disregard of the safety of the spectators? I think not. He testified under cross-examination and I quote:

“Between “CH1” and “CH2” there was a split second and I was not applying brakes...At this time I believe I had just come up off the accelerator...I did not have time to apply brakes as it happened so fast.”

[61] Pressed further in cross-examination he said:

“I don’t believe I made an error in not applying brakes as I don’t believe it would have helped the situation at the time.”

[62] In re-examination Darrin White stated that it would have taken approximately 1/10th of a second to move from “CH1” to “CH2” which was a distance of about 40 ft.

[63] It is clear that Darrin White by virtue of the skid was confronted with a dilemma in which he did not have time to calculate and decide on options. That this is a circumstance of significance is borne out by the observation of **Dankwerts LJ** in the case of **Wooldridge at p 60** that:

“Mr. Holladay’s duty to his employer was to utilise the qualities of the horse so as to show it to the best advantage. This involved the horse going at a fast gallop. Decisions have to be taken in a split second and it is impossible for a rider, as it seems to me, in such circumstances to calculate every possible result in his mind.”

[64] The result of such a dilemma is aptly described by **Diplock LJ** in **Wooldridge at p 68**, thus:

“If, therefore, in the course of the game or competition, at a moment when he really has not time to think, a participant by mistake takes a wrong measure, he is not, in my view, to be held guilty of any negligence.”

[65] What clearly emerges from the case of **Caldwell v Maguire** earlier referred to at [para 25] is that the threshold for liability is high and that there would be no liability for errors of judgment, oversight, or lapses of which any participant might be guilty in the context of a fast-moving contest. Something more serious is required. [See **Tuckey LJ** at p 23]

[66] This merely re-states the observations of **Sellers LJ** in the **Wooldridge** case at p 52 that:

“Where competitors or players break off from the event or game or divert clearly from the rules there may well be room for liability

on them as some of the cases show, but the question arises whether liability should be placed on a competitor or player who is merely seeking to excel and to win, it being the very purpose on which he is engaged and the very endeavour which people have assembled to witness and applaud.”

[67] In this case to my mind, there is nothing in the evidence to suggest that Darrin White did not comply with any of the rules, conventions or customs of the speed event in which he was a competitor or that he fell short of the standards, skills and judgment reasonably to be expected of him. Certainly there is no evidence that he deliberately steered his car in the direction of the spectators so as to injure them. The circumstances in the present case are entirely distinguished from those in the Canadian case of **Keough** relied on by Strickland.

[68] That the deceased lost his life as a result of the accident is unfortunate. But he did not do so as a result of any deliberate or reckless conduct on the part of Darrin White during the rally. And so I find.

[69] Accordingly, the action against Darrin White is dismissed. As to the question of costs I shall hear submissions from Counsel.

Issue (ii) Liability of the Club

[70] In her amended statement of claim Strickland alleges that the accident by which her son, the deceased met his death was caused solely by the negligence of Darrin White and/or the Club. The full particulars of that negligence are:

- i. failing to take any or any adequate measures to fence off the racing track;
- ii. failing to take any or any adequate measures to keep the spectators at a safe distance away from the track;
- iii. failing to post any or any adequate signs to warn spectators of impending danger; and
- iv. exposing the deceased to the risk of injury of which they knew or ought to have known.

[71] So the question is whether the Club discharged its duty of care to Strickland’s son. That is a question of fact to be determined having regard to all the circumstances.

The Law

[72] The nature and scope of the duty imposed on organisers of sporting events as explained in **White v Blackmore [1972] 3 ALL ER 158** is a duty to do all that is reasonable to ensure the safety of the spectators. In the words of **Lord Denning MR**:

“No doubt the visitor takes on himself the risks inherent in motor racing, but he does not take on himself the risk of injury due to the defaults of the organisers. They like to see the competitors taking risks, but they do not like to take risks on themselves. Even though it is a dangerous sport, they expect, and rightly expect, the organisers to erect proper barriers, to provide proper enclosures and to do all that is necessary to ensure their safety. If the organisers do everything that is reasonable, they are not liable if a racing car leaps the barriers and crashes into the crowd: See **Hall**

v Brooklands Auto Racing Club. But, if the organisers fail to take reasonable precautions, they cannot exclude themselves from liability by invoking the doctrine of *volenti non fit injuria*; for the simple reason that the person injured or killed does not willingly accept the risks arising from their want to reasonable care.”

- [73] In **Hall v Brooklands Racing Club (1932) All ER 208 at 213, Scrutton LJ** enunciated with illustrations what is embedded in the duty of care on organisers of a sporting event thus:

“What is reasonable care would depend on the perils which might reasonably be expected to occur, and the extent to which the ordinary spectator might be expected to appreciate and take the risks of such perils. Illustrations are the risk of being hit by a cricket ball at Lord’s or the Oval, where any ordinary spectator in my view expects and takes the risk of a ball being hit with considerable force amongst the spectators, and does not expect any structure which will prevent any ball from reaching the spectators. An even more common case is one which may be seen all over the country, every Saturday afternoon spectators admitted for payment to a field to witness a football or hockey match, and standing along a line near the touchline.

No one expects the persons receiving payment to erect such structures or nets that no spectator can be hit by a ball kicked or is violently struck from the field towards the spectators. The field is safe to stand on, and the spectators take the risk of the game”.

- [74] In **Hall** the Court of Appeal, reversing the decision at first instance, held that the appellants as owners of the racing track for motor cars were under a duty to ensure that the course was as free from danger as reasonable care and skill could make it, but they were not liable for accidents which no reasonable diligence could foresee.

- [75] In the Trinidadian case of **Mowser v George De Nobriga and Others (1969) 15 WIR 147**, the plaintiff was a spectator at a horse racing event when she was struck by a riderless horse who left the track in an area where there was no outer rail or fence. It was held that in the circumstances there was a real risk of injury to spectators should a horse veer from the track and that the defendants were negligent in their failure to take sufficient precautions to adequately protect the plaintiff.

- [76] In the course of his judgment at page 151 **Rees J** observed:

“... it would seem that it is not enough to say in the present case that, the defendants could have foreseen the possibility of a riderless horse running off the track and knocking someone down. The further question in determining liability is whether it can be said that the accident was of such a kind that the defendants as reasonable men ought to have foreseen the probability of its occurrence. As to who are reasonable men must depend on the

particular circumstances of the case, the test being what would be foreseen by a reasonable observer of the class whose conduct is in question and if the accident is of a different type and kind from anything that the defendants could have foreseen, they are not liable for it.

The Evidence

- [77] The first witness called by Strickland was Clifton Henry the photographer, who also attended the rally. He took the photographs admitted into evidence.
- [78] Cross-examined by Counsel for the Club, he testified that the accident occurred at a four road junction. He saw at least one police officer at that junction and marshals of the Club, but he could not recall the number of marshals. When he arrived people were assembled at all four points of that junction.
- [79] Referred to Exhibit "CH2" he testified that it shows four roads at the junction. He was on the embankment where the handle of the bicycle is seen in the photograph on the left hand side of the vehicle if it had continued along the road. The path of the vehicle was towards the bicycle handle. Shown Exhibit "CH2" and "CH3", he stated that he was not in the section of the corner shown where the deceased was. Exhibit "CH3" shows the deceased being struck by the vehicle. Exhibit "CH2" he testified, shows 3 embankments. There is a fourth embankment which is not shown in Exhibit CH2".
- [80] Pedro Hinds, the second witness called by Strickland, testified that on 6 April 1997 he was watching a motor racing event at Bourbon, St. Lucy. He got there between 6.00 a.m. and 9.00 a.m. before the event started. He saw several persons there whom he knew including Rodney Strickland, the deceased. The father of the deceased is married to his aunt and he and the deceased attended the Samuel Jackman Prescod Polytechnic.
- [81] On that day he saw the car in Exhibit "CH1" several times and doing the preliminary run on the course before the event started.
- [82] He recalled that the car skidded in the preliminary run in the corner shown in Exhibit "CH1". He stated that he was standing watching the event at the four-cross junction.
- [83] Shown Exhibit "CH1" he identified himself as the person in the plaid shirt in front of the deceased running away from the car. He was standing about 4 feet from the edge of the road. He did not see the car coming out of the corner when it began to skid as the tree seen in Exhibit "CH2" was blocking his vision.
- [84] There was, he stated, a marshal directly in front of them standing at the edge of the road. More than twenty spectators were standing on the embankment where he was. He recalled seeing one marshal. One policeman was in the area, but he was moving around.
- [85] The rally was travelling from west (Bourbon) to East (Mount Poyer). Trents road runs North/South to Crab Hill, cutting the Bourbon/Mount Poyer Road at the intersection. Shown Exhibit "FG1", he testified that he entered the course at its start at Bourbon. He walked the course from Bourbon to Onion Field to Swampy Town until he arrived at the point marked by the court with an asterisk on Exhibit "FG1". He did not see any barricades or warning signs as he walked along.

- [86] He recalled seeing a barrier on the North/South road. There were no barriers which would have prevented spectators from coming forward on either embankment. There were no warning notices posted in the area of the junction and it was dry at the time of the accident.
- [87] When he initially arrived at the four-cross road, he was standing on the opposite side from where he indicated he was struck. Referred to Exhibit "CH2", he stated that initially when he arrived at the four-cross road, he was standing at the point marked with an asterisk. He moved to the other side of the road because the first area where he was standing seemed dangerous and the area he went to seemed less likely that a car would run off.
- [88] There was, his testimony continued, a marshal standing at the edge of the road who, from his observation, was indicating to spectators when a car was coming through the course by blowing a whistle. Just before the accident, he did not hear a whistle nor had any indication that a vehicle was coming. There was no public address system in the area that he was aware of, and in response to the court, he stated that he did not hear any public address announcements being made. No one gave him any instructions about where he was standing or told him not to stand there.
- [89] Under cross-examination Pedro Hinds testified he did not know the difference between a stage event and a speed event but accepted that this rally was a speed event. He was told by another spectator that one run was preliminary and the other official. He did see when the first car did its preliminary run. He saw G2223 go past where he was standing about 2 or 3 times. First time it came through he was on the same side where the deceased was struck.
- [90] When he was at the first point, he stayed about 5 minutes. No cars passed through there. He saw all the cars from the other side. He had walked the course to find a good vantage point and decided that the four-cross was such a point.
- [91] He recalled seeing a police officer on the Friendship side of the road. He believed there was a barrier on Friendship. There was also a barrier on Trents' side. These barriers were positioned across the road so that vehicles could not pass. Spectators on either side of Friendship or Trents were not behind the barriers.
- [92] In further cross-examination, he testified that he was at the scene when the court visited the scene. The barriers were set back about twenty feet from the junction on both the Friendship and Trents sides.
- [93] Referred to the map (plan) he stated that he arrived very early and did not recall seeing a barrier at Onion Field. When he arrived at the four-cross junction the barriers were just being put into place.
- [94] Apart from seeing the two barriers on Friendship and Trents, he could not recall whether there was a notice affixed to the barriers. He was aware of one marshal at the junction with a whistle. He recalled one but it was possible that more than one was there. When he first saw the policeman he was on the Friendship side of the junction moving completely around the junction generally patrolling the area. He believed that it was part of his job to allow residents to pass through the area and to control spectators.
- [95] He recalled hearing a whistle prior to cars coming through but not every time. The cars ranged in power and on that day it appeared to him that the marshal was

concentrating on alerting the crowd to the more powerful cars coming through. The marshal blowing the whistle was directly in front of him and he was not aware of any other duties he performed.

- [96] Still under cross-examination he testified that he was studying mechanical and electrical engineering. From his common sense and knowledge he worked out that where he was standing was the safest point. There were also an embankment and some trees. He further stated that when the cars were coming through there were about twenty persons at the section. It was a good vantage point.
- [97] Standing where he was and looking to his left he could not see the car coming out of the corner. He could see it after it left the bend and was coming closer to him. He believed the car would have had two runs before the accident and in his opinion G2223 was one of the less powerful cars in the rally.
- [98] Shown Exhibit "CH2" he did not know whether the car struck any of the boulders. As he walked from Bourbon to the four-cross road he did not recall seeing any notices on any poles.
- [99] The next witness called by Strickland was Terrence Farnum. He testified that he was an auto-mechanic and a licensed driver. He vaguely remembered 6 April 1997 but on that day he was at Hannays, St. Lucy at a rally event as a spectator. He was not a marshal at that event. He recalled signing a document for the Rally Club, the effect of which was that he was to be there as an assistant to Mr. Patel, a marshal, a friend whom he knew for a number of years.
- [100] He was there to do what Mr. Patel asked him to do, for example, moving barriers. He first saw G2223 in the trial run and thought it was pretty normal. It did not appear to him that the driver was having any problems. However, when it was suggested to him that he had given evidence to the contrary at the Coroner's inquest some two years earlier that in the trial run the car White was driving skidded in that same corner, he agreed that he had so testified. That skid he considered to be normal.
- [101] His testimony continued that when the accident occurred he was standing on the opposite side of the road and it was not correct that he was standing on the side of the road where the accident occurred.
- [102] Shown his evidence at the Coroner's inquest, he stated that he was standing at the side of the road where the accident occurred before it occurred. He left that side, he said, following his instinct as he thought it was not the safe side to be on.
- [103] He saw the accident. The car was coming up and the left back wheel went into the grass, and then it 'shoot' right over to the right side of the road where it hit some spectators.
- [104] Under cross-examination, Terrence Farnum stated he went to the rally in a car driven by Mr. Patel and they got to the site before the rally started. They drove to the junction where the accident occurred and along the road to the junction there were some barriers on either side of the road.
- [105] When he got to the junction the two roads that were not rally roads had barriers to them. There was one police officer. He could only recall Mr. Patel as a marshal at that junction. It was the first time he was called to assist at a rally and he was depending on Mr. Patel to decide what he was, or was not to do.

- [106] Both he and Mr. Patel were in the same area when the accident occurred. He thought they crossed over together. He recalled hearing whistles but did not know whether they were blown by spectators or other marshals.
- [107] He understood that the rally was a speed event and to see a car skid is a normal feature of a speed event.
- [108] The Club called two witnesses. The first was Anthony Carter a former sergeant of the Royal Barbados Police Force.
- [109] He testified that on 6 April 1997 he was attached to the Crab Hill Police Station and was stationed at the junction where the accident occurred. Apart from himself there was one other Island Constable. There he saw members of the public who were viewing the rally. He also saw marshals of the Rally Club there. There were barriers placed along the roads not being used as part of the course of the rally.
- [110] The rally was running in the direction from West to East with barriers North/South.
- [111] As the cars approached, he and the Island Constable were on the navigator's side. There was a marshal positioned on the driver's side and another on the navigator's side. The public was on both the navigator's and the driver's side.
- [112] He was standing on a mound raised a little higher than the road in the same space where members of the public were standing. There was also a little mound on the driver's side (a little grassy area) where members of the public were also standing. Only the road separated him from the mound on one side of the road and that on the other side.
- [113] His duty, he stated, on that day, was to maintain order, assist the marshals in the execution of their duties as well as any other officials of the Rally Club. He considered the safety of members of the public to fall within his duties in a broad way.
- [114] On his arrival, the course and precautions appeared to be well laid out. He spoke to the marshals about certain adjustments he felt were needed and the adjustments were carried out as he instructed. These adjustments entailed the removal of a snow-cone vendor who had spectators around him right at the junction. He had the crowd pushed back away from the road because the crowd was pushing against the barrier erected there, and he also pushed back the barrier.
- [115] Before the test run, he was satisfied about the safety arrangements at that junction. He moved from the mound onto Friendship road behind the barrier which blocked off Friendship before the test run started. He was about 10 feet away and felt safer there. From there he could see the vehicles as they passed as well as members of the public.
- [116] He testified that prior to the test run, the vehicle G2223 driven by Darrin White went out of control in the same bend but kept on the course. That, he stated, prompted him prior to the official races to go over to the driver's side and push the crowd further back with the assistance of the marshal and the Island Constable. In pushing the crowd back, he told them to remain in the position where he had stationed them.
- [117] He testified that when the race actually started, the crowd, on the mound on the driver's side where the accident occurred, did not comply with his direction.

- Some of them came forward close to the barrier looking in the direction from which the car was coming. His decision to move to Friendship on the navigator's side came after he had secured the crowd and directed them where to stand.
- [118] Under cross-examination, he testified that the barrier he asked the crowd to move back from is not shown in Exhibit "CH2". He stated that there was no barrier on the grassy area or mound where the accident actually occurred.
- [119] He observed that during the trial run the crowd positioned on the grassy area or mound moved forward. He was satisfied with where the crowd was standing at the commencement of the race, but when the race started the crowd positioned on the grassy area or mound moved forward.
- [120] Shown Exhibit "CH3" he stated that he pushed the crowd back to the area of the trunk of the large tree. He considered that to be a safe position. After he moved the crowd back, he crossed to the other side for safety. He moved to control the crowd on the Friendship side standing on the mound opposite the bicycle handle shown in Exhibit "CH2". That crowd is not shown in any of the photographs.
- [121] Still under cross-examination, he testified that when he said in chief that he moved for safety, he was talking about his own safety and that of the crowd on the Friendship or navigator's side. That crowd was a bigger crowd than that on the grassy area where the accident occurred.
- [122] He considered that during the actual race the crowd would do the same surging forward as always. He considered that a dangerous thing.
- [123] There were no other officers with him and the Island Constable was posted further on Friendship road on the navigator's side. He could not recall whether there were marshals on the grassy area or mound once the race was in progress. After the start of the race, persons supervising the race remain where they are.
- [124] Prior to this race, he stated that he had supervised other rally races. Before the rally he would discuss safety and crowd control with the marshal and Island Constable. There are, he said, no guidelines for safety and crowd control at these events.
- [125] The next witness called by the Club was Charles Gale. The Club in 1997 celebrated its fiftieth anniversary. He was the competition secretary in that year. As such he was responsible for organising events as well as the related arrangements for the running of those events.
- [126] He testified as to how a rally event is planned and executed, starting with obtaining the permission of the Ministry of Transport and Works for the closure of roads and the holding of the rally events; the drawing up of a plan for the requirements for the course and a determination of the number of marshals needed based on a plan of the expected course; and notification by letter to the residents along the course, hand delivered by marshals designated for that purpose.
- [127] Every event is covered by governing rules on the behaviour of drivers and the Rally Club represented by him as Competition Secretary. The **Additional Supplementary Regulation** for the 3rd of the series of Speed Events in the Automotive Art Championship for 1997 in respect of the rally in question was admitted into evidence as Exhibit "FG5".

- [128] The Club, he stated, would engage the services of Island Constables to assist with road closure and crowd control in addition to the marshals allocated to the course for the event.
- [129] The marshals are responsible for control of the roads coming into the course, placing barriers, running the timing system and general security of the course. They are equipped with flags, radios and fire extinguishers at all major points along the course with contact from start to finish with the Clerk of the Course.
- [130] A plan of the course for the rally was admitted by consent as Exhibit "FG1" with a legend showing the placement of marshals, marshals and radios and barriers along the course.
- [131] Looking at Exhibit "FG1", Charles Gale testified that the points at which the letters "M & R" are shown along the route are considered important points designated by him.
- [132] A determination of those important points was based on points of intersection, spectator points and as visually appeared on the day. Concern about spectators has to be with points where spectators would be allowed along the course. He added and I quote:
"There are some areas I consider to be safe for spectators and others unsafe".
- [133] Looking at Exhibit "FG1", the accident occurred at the intersection of Friendship, Hannays and Swampy Town. It was also a point at which a significant crowd had congregated both on the navigator's side and on the driver's side.
- [134] He reviewed the course to establish where the marshals would be located. That location would have been assessed prior to the event on the basis of the plan. On the morning of the event, as Clerk of the Course, he put the marshals in position on initial set up and he would have reviewed their placement once or twice before commencing the events.
- [135] This course, he stated, had been used before, and based on historical information they would be able to determine where a crowd is likely to gather for viewing.
- [136] Based on that information, he testified, they expected a crowd to be at the junction of Friendship, Hannays and Swampy Town. The placement of a police officer at that junction would have been done in conjunction with him. He pointed out, based on Exhibit "FG1", that barriers were placed at the intersection of Hannays, Friendship and Swampy Town, but particularly on the Friendship to Hannays run.
- [137] On the barriers along Swampy Town, at the Friendship to Hannays junction and at Mount Poyer, notices were placed warning the public that motor sport is dangerous. Notices, he stated, were also deployed at the start and finish. The notice was admitted into evidence as Exhibit "FG6".
- [138] As Clerk of the Course, Charles Gale testified that prior to the start of the race, he would drive the course one last time before giving permission for it to be run at ordinary speed. Essentially, he would be looking at marshal placement, barrier placement and at the number of spectators that are present to ensure that they are sufficiently far back so as not to constitute a hazard.
- [139] Having finished that drive through, in his opinion, the course was adequately set out and spectators sufficiently well back.

- [140] There were, he stated, about 20 to 25 entrants who, as entrants, were allowed a test run.
- [141] After the test run, the marshal would report on any problems that manifested themselves during the test run, that being the purpose behind the test run. The test run of each entrant is completed and then the official race of each entrant takes place.
- [142] Three marshals were assigned to the Friendship/Hannays/Swampy Town position with one police officer and one Island Constable.
- [143] He received a call on the radio about the accident and arrived on the scene about two minutes later where he saw the injured who were transported to the Queen Elizabeth Hospital.
- [144] As Clerk of the Course, he closed the event after the accident. No other event has been held at that course since the accident.
- [145] He had driven that course as a competitor. From his driving experience that spot [of the accident] was a spectator point because as you leave the junction going east, the road drops away and it is what is called 'a jump'. At the junction where the accident occurred, there were about 150 to 200 spectators taking into account both sides of the road.
- [146] Under cross-examination, Charles Gale accepted that motor sport is a spectator sport and that the accident occurred at a motor sport event. He agreed that the majority of spectators were at the area where the accident occurred. The duty of the marshals is to keep the course clear of pedestrians and vehicles. They are also entrusted with safety in terms of fire extinguishers and warning flags. The marshal did not have the authority to stop the race in the event spectators are unruly and are encroaching on the course.
- [147] If there is an encroachment the marshal would communicate with the Clerk of the Course that there is a problem and recommend that the course be closed. The Clerk would then halt the event. He stated that he did not receive such a call that day.
- [148] Shown the photographs at Exhibit "CH2" Charles Gale agreed that the accident occurred at that junction and stated that spectators on the road itself would be an encroachment.
- [149] Still looking at that photograph, he stated that he would consider the road edge to start where the large rock is shown and if a spectator was standing at the edge of the road behind that large rock it would not represent an encroachment on the road.
- [150] Still under cross-examination, Charles Gale stated that he would not consider behind that rock a safe place to stand and that the photograph suggests that the young man in blue, seen in that photograph, is close to the rock. Looking at the photograph, he stated that it did not appear to him that that young man was in a safe place.
- [151] All the marshals, he said, are on the course at the same time. Only three marshals were employed at the junction where the accident occurred, because they were to be supported by police and Island Constables.
- [152] The event, he testified, was governed by the *General Competition Rules of the Barbados Rally Club* admitted into evidence as Exhibit "DWI". Referred to page

38 of Exhibit “DW1” he stated that he was not sure whether that Exhibit does contain any rules for the marshals dealing with spectators.

- [153] Referred also to paragraph 131 of Exhibit “DW1” under the rubric duties of Observers and Flag Marshals, Charles Gale stated that the rules govern the position as between drivers and officials and not the position between officials and spectators.
- [154] There were, he stated, no written guidelines laid out which gave marshals a standard for dealing with the conduct of spectators generally. Marshals were generally expected to use their common sense as to what is not good order. The purpose of the barriers is to provide a barrier to vehicular traffic and to pedestrian spectators who would only be on the road. No barriers were set to keep spectators from encroaching on the road. The route was not used since the accident as the Club felt that it would be insensitive in view of what had taken place.
- [155] Finally, he stated that the issue of safety was considered in determining whether the course should be further used for races and they considered it safe at that time.

Submissions of Counsel

- [156] Counsel for the Club submitted that in all the circumstances, the Club discharged its duty to the spectators and the measures it had taken were sufficient to negate liability on the part of the Club. These measures included careful planning of the event; employing sufficient officials to man the event, including three police officers, three Island Constables and eighteen marshals to assist in crowd control and safety; in particular, deploying three police officers, three marshals and an Island Constable at the Hannays/Friendship junction where the accident occurred; the placement of barriers across roads leading to the course with warning signs on those barriers; the unchallenged specific instructions by the police sergeant and the marshals at the junction to stay in the area of the tree in Exhibit “CH2” and the actions of the police sergeant in moving the spectators away from the mound.
- [157] Counsel further submitted that Strickland called no affirmative evidence to prove her case but relied on cross-examination of the Club’s witnesses.
- [158] Relying on the rule in **Browne v Dunn (1893) 6 R. 67, H.L.** which Counsel stated requires a cross-examiner to put his case to the opposing side’s witness in detail, Counsel submitted that Strickland offended the rule on every issue raised by her during the trial or pleaded. On the issue of the adequacy of the number of marshals and other personnel at the junction, Counsel contended that, as a bare minimum, it should have been put to Charles Gale that the number of officers was inadequate to control a crowd of 150 to 200 persons and allowed him to explain.
- [159] Counsel pointed to the unchallenged evidence that warning signs were placed on barriers erected at Hannays and Friendship roads adjoining the courses and submitted that there is simply no evidence that the notices were inadequate.
- [160] Counsel submitted further, that it was not reasonably practical to erect barriers along the course or even the mounds; that physically, restraining the crowd would have been impracticable and there was no suggestion to Charles Gale, the Clerk of the Course and the Club’s representative, that barriers or some other restraint ought to have been placed on the mound. If, Counsel submitted, Strickland wished to advance that the erection of barriers was reasonable and practicable then such a proposition should have been put to Charles Gale for his response.

- [161] Counsel for the Club submitted that Strickland's Counsel though raising the issues of the number of marshals employed; the non-erection of barriers for crowd control and whether there were specific guidelines given to the marshals for crowd control failed to probe the witnesses sufficiently to establish a causal link between these issues and the accident.
- [162] Accordingly, Counsel submitted that in all the circumstances the Club had discharged its duty to the spectators.
- [163] In response, Counsel for Strickland stated that the Club breached its duty of care to the spectators in that no adequate measures were taken by the Club to safeguard the spectators. Specifically, Counsel for the Club relies on the absence of barriers for crowd control; the absence of a public address system as pleaded by the Club; the absence of guidelines regarding safety and the absence of any evidence that the marshals gave any instructions to the crowd to move back or that they made any attempt to control the crowd at the junction where the accident occurred.
- [164] Counsel further submitted that there was no dispute as to the deployment of police officers, Island Constables or marshals on the course, but argued that the mere deployment does not represent a discharge of the Club's duty of care.
- [165] Further, Counsel for Strickland submitted that the features of that corner, being sharp and blind and impeding the driver's vision on taking that corner, rendered the corner dangerous. It was, he submitted, therefore foreseeable that a car could leave the road at that corner and injure spectators standing nearby.
- [166] The Club, he submitted, should be held liable in negligence for the death of Strickland's son.

Discussion

- [167] It is not in dispute that the Club is highly experienced in its organisation and planning of rallies. That is quite clear from the evidence of Charles Gale. At the date of the accident the Club was in its fiftieth year of existence and held an average of approximately 10 rallies per year.
- [168] Charles Gale as Competition Secretary, detailed the various planning stages involved in order to execute the rally in issue. And no criticism was directed at the planning and arrangements made for holding of the rally. It is not contended that the Club in any way failed to comply with its **General Competition Rules** under which the rally is held. Every step that was required to establish, in the words of Charles Gale, "the legality of the race" was taken.
- [169] The real issue is whether the Club as organisers of the event did all that was reasonable to protect the spectators from the risk of injury from a car skidding in that corner and crashing into the spectators on that embankment or mound. In this regard the test is whether it can be said that the accident which occurred at that junction was of such a kind that the Club ought reasonably to have foreseen the possibility of its occurrence.
- [170] The Club, it is contended by Strickland, failed to take any or any adequate measures to fence off the race track. In answer, the Club argued that it was not reasonably practicable to erect barriers along the course or even on the mound. No reason was advanced as to why it was not reasonably practicable to erect any barriers given the testimony of Charles Gale that concern about spectators had to

be with points where spectators would be allowed along the course and that there were some areas he considered safe for spectators and others unsafe.

- [171] He was not pressed to identify those unsafe areas. However, it is clear that while barriers were erected to keep the route of the rally free of vehicular and pedestrian traffic, no barriers whatsoever were erected with the object of spectator control or spectator safety at any area along the course. That is the effect of the evidence of both Charles Gale and Pedro Hinds.
- [172] On the testimony of Charles Gale, the Club, based on historical information, expected a crowd to be at the junction where the accident occurred and from his driving experience as a competitor, that spot was a spectator point because as drivers leave the junction going east the road drops away and it is what is called 'a jump'. Moreover at that junction there were about 150 to 200 spectators taking both sides of the road into account.
- [173] It seems to me that the Club as organiser of that rally ought reasonably to have foreseen that given the nature of that corner a competitor approaching at high speed was likely to pick up a skid and lose control of his car. It ought also to have appreciated that in such an event the car could leave the course and crash into spectators who were not at a safe distance away from the course, and that even if the spectators were positioned at a safe distance they were likely to surge forward to get a better, or the best view of the rally in the absence of a barrier of some kind to keep them at that safe distance.
- [174] Anthony Carter, the former police Sergeant on duty at the junction, and on whose testimony the Club urged the court to place great weight, stated that on his arrival the course and the precautions appeared to have been well laid out. He was satisfied with the safety arrangements at that junction, having removed the snow-cone vendor from the junction and having had the crowd pushed back away from the road because the crowd was pushing against the barrier erected there.
- [175] It is significant, however, that despite his satisfaction with the safety arrangements he moved from the mound onto Friendship Road behind the barrier which blocked off Friendship because he felt safer there. Further, having been prompted to push the crowd on the mound back to the area of the tree trunk shown in Exhibit "CH3" which he considered to be a safe point and instructed them to remain where he stationed them, he then crossed back to the other side of the road for safety. So the question is, if indeed he had such confidence in the safety arrangements and considered the area of the tree trunk safe, why did he not stay there to ensure that the spectators remained where he directed them to remain? The answer seems clear. He did not consider that area to be safe.
- [176] One of the safety measures relied on and pleaded by the Club was the placement of barriers along the Onion Field at the Swampy Town entrance, Trents to Crab Hill, Four Roads, St. Swithin's Church Road and at Harris Road.
- [177] The purpose of these barriers was to keep vehicular and pedestrian traffic off the course of the rally.
- [178] In this case no barriers of any kind were erected with a view to spectators' safety. It ought to have been within the contemplation of the Club that there was a risk of a driver losing control of his car and crashing into the spectators if they were not contained at a reasonably safe distance. Not to have erected any barriers even at

points along the route it considered unsafe was a grave omission on the part of the Club.

- [179] It was also pleaded by the Club that there was a constant public address system in place reminding residents to stay back from the edge of the road and to be generally careful. However, neither Anthony Carter nor Charles Gale gave any evidence of such a public address system. On the other hand, Pedro Hinds stated that there was no public address system in the area and in response to a question from the court, stated that he did not hear any public address announcements being made.
- [180] I am therefore satisfied and hold that there was no such public address system in the area where the accident occurred.
- [181] As to the deployment of the marshals along the course to assist in all aspects of safety, the evidence of Charles Gale is instructive. He stated, and I quote:
“The marshals essentially are responsible for control of roads coming on to the course, placing barriers, running the timing system and general security of the course. [They] are equipped with flags, radios and fire extinguishers at all major points during the course with contact from start to finish with the Clerk of the Course”.
- [182] Shown Exhibit “FG1” he testified that the points at which the letters ‘M & R’ are placed along the route are considered important points, and he would have designated these points. What that testimony suggests, is that the number of marshals deployed and their responsibility were determined, not by safety concerns for the spectators, but rather by the technical demands of the rally.
- [183] This is borne out by his earlier testimony that about one week prior to the event a plan is drawn up of the requirements for the course which is discussed with the Rally subcommittee and it is decided how many marshals are needed based on the plan of the expected course.
- [184] He further testified that they would engage the services of Island Constables to assist with road closure and crowd control in addition to the marshals allocated to the course for the event.
- [185] In this regard the testimony of Anthony Carter is also instructive. He said that his duty on the day in question was to maintain order; also to assist the marshals in the execution of their duties as well as any other officials attached to the Rally Club. He would consider the safety of members of the public to fall within his duties *in a broad way*. (Emphasis added).
- [186] The evidence reveals that the number of Island Constables engaged were three, along with three police officers. So it seems to me that the issue of the safety of the spectators and crowd control were not driving considerations in the decision as to how many should be deployed or where they should be deployed.
- [187] Counsel for the Club submitted that it should have been specifically put to Charles Gale that the number of officials was inadequate and allowed him to explain. Indeed, that may have been prudent. The fact is, however, that three marshals, one police officer and one Island Constable were assigned to the junction in question where between 150 to 200 spectators were gathered.

- [188] To my mind, it does not require much thought to come to the conclusion that in the absence of any other method of control five persons were inadequate to ensure that the spectators remained at a safe distance away from the road, particularly in light of the testimony of Anthony Carter that once the vehicles are on the track after the start of the race, persons supervising the race remain where there are.
- [189] I therefore find and hold that the number of officials employed at the Hannays/Friendship junction were inadequate to ensure the safety of the spectators there assembled.
- [190] As to the road closed signs located at points along the course, it seems to me that they were not intended to address the safety of the spectators but rather to ensure the rally course was free from vehicular and pedestrian traffic.
- [191] Bearing in mind the words of **Lord Denning MR** as he then was in **White v Blackmore p 164 letter d** that:
 “People go to race meetings to enjoy the sport. They like to see the competitors taking risks, but they do not like to take risks on themselves...they expect and rightly expect organisers to erect proper barriers...”

I find that in all circumstances of this case, the Club did not do everything that was reasonable to ensure the safety of the spectators.

Issue (iii) Exclusion of liability

- [192] The Club contends that it was exempted from any liability to Strickland’s son by virtue of the notice placed on barriers along Swampy Town at the entrance, on barriers at the Friendship to Hannays junction, on barriers at Mount Poyer and at the start and finish. That notice admitted as Exhibit “FG6” read:

**“WARNING TO THE PUBLIC
MOTOR SPORT IS DANGEROUS”**

“It is a condition of admission that all persons having any connection with the promotion and/or organisation and/or conduct of the meeting including the owners of the land and drivers and owners of the vehicles and passengers in the vehicles are absolved from all liability arising out of accidents causing damage or personal injury (whether fatal or otherwise) howsoever caused to spectators.”

- [193] There is no dispute between the parties as to the existence of barriers on the course. As to whether notices were placed on the barriers, Pedro Hinds testified in chief that there were no warning notices in the area of the junction, and he did not observe any barricades or warning signs as he walked along.
- [194] Under cross-examination he stated that apart from seeing two barriers on Friendship and Trents, he could not recall whether there was a notice affixed to the barriers.
- [195] Charles Gale, the Clerk of the Course, testified as to the placement of the notices on the barriers. It was not suggested to him or, indeed, to any of the other witnesses by Counsel for Strickland that notices were not posted on the barriers.

- [196] I therefore accept and find that notices were posted on the barriers as Charles Gale testified.
- [197] The warning notice relied on by the Club is identical in terms to that at issue in **White v Blackmore op. cit.** There, it was sufficient to exclude the liability of the organisers of the race meeting to a spectator who was fatally injured.
- [198] Counsel for the Club relies on **White v Blackmore** applying the criteria in **Ashdown v Samuel Williams & Son [1957] 1 ALL ER** that must be satisfied if the notice is to be effective in excluding or limiting liability for negligence. That criterion is first that:
- (i) the words of the notice must be sufficiently clear to exclude liability; and
 - (ii) it must be shown that all reasonable steps are taken to draw the condition contained in the notice to the attention of the deceased.
- [199] I accept that the notice in this case is sufficiently clear to exclude liability for negligence on the part of the Club and satisfies the first criterion.
- [200] The second criterion is to be found in the words of **Buckley LJ** in **White v Blackmore** at p 171, letter a, where he states:
- “The organisers are, I think, shown to have taken all reasonable steps to draw the condition contained in the notice to the attention of the deceased.”
- [201] It seems to me, however, that that statement was predicated on the specific findings of fact made by the learned trial judge as set out by **Buckley LJ** in the sentences immediately following his statement: And I quote:
- “The learned judge found that warnings of this character were a common feature at jalopy races with which the deceased would have been familiar. He also found ... that the deceased saw this particular notice and appreciated its character. He also found that the deceased saw a number of other notices in identical terms posted about the field and that he appreciated what those notices were intended to effect. I think he came on to the field in the afternoon on the terms contained in the notice displayed at the entrance to the ground.”
- [202] Each case must be determined on its own facts. So I must ask myself whether there is evidence before me on which I might make similar findings of fact. No evidence was lead that the warning is a common feature of and appears at all speed events and other events staged by the Club.
- [203] There was no evidence before me from which I could reasonably infer that the deceased in this case saw the notice or appreciated its character. In this regard it must be borne in mind that the jalopy race in **White v Blackmore** was held on a field to which there was a defined entrance for the admission of spectators who were required to pay an admission fee. The deceased was also a competitor in the

racers and had gone to the field earlier that morning to take his jalopy in order to enter for the races.

- [204] In those circumstances, it seems to me that it would have been easy to establish that the deceased saw or must have seen the warning notices displayed at the entrance and around the track.
- [205] In the present case, the factual matrix is far removed from that in **White v Blackmore**. The rally was being held along a course some two miles long. There was no defined entrance point because there was no admission fee. Given the nature of the course it seems to me that a spectator could enter the course at any point. And in the absence of evidence that the notices on the barriers were so positioned, that irrespective of the point at which the deceased entered the course, he could not but see the warning notice and appreciate its content, I am not prepared to fix him with notice of that warning.
- [206] The testimony of Charles Gale is that there were notices on the barriers at the Friendship to Hannays junction. However, it is clear from Exhibit "CH2" that the accident occurred before the junction. There is no evidence that the deceased reached or was at that junction or indeed was on the Trents road where, according to the evidence of Anthony Carter, that barrier was positioned. Moreover, Trents road is not seen in Exhibit "CH2" as Anthony Carter testified.
- [207] I therefore hold that in the circumstances of this case, the Club has not established on a balance of probability that Strickland's son had notice of the warning or its content.
- [208] Accordingly, I find that the Club cannot rely on the warning to exclude its liability for negligence in failing to take adequate and reasonable measures to ensure the safety of Strickland's son, the deceased.
- Negligence of the deceased**
- [209] Counsel for the Club submitted that the effective and operative cause of the death of the deceased was his own failure to take reasonable care for his safety. By advancing toward the road on the approach of Darrin White's car in disobedience of the directive of the police officer, the deceased showed a callous indifference for his own safety.
- [210] I accept the unchallenged testimony of Anthony Carter that he had moved the crowd back to the tree shown in Exhibit "CH3" and told them to remain there. Had the deceased complied with that directive he probably would not have been injured. That however, to my mind, does not relieve the Club from its primary duty to take all reasonable measures for the safety of spectators.
- [211] There was no fence, no rope or barrier of any kind behind which the spectators could be contained or which would have demarcated the distance from the road at which the Club considered spectators to be safe. Had that been the case, and the deceased had breached the barrier, I think the result might have been different.
- [212] There also was no evidence that any marshal gave any directions to the spectators assembled on the embankment where the accident occurred. And I have found that there was no public address system at that junction warning the spectators to stay back from the edge of the road.

[213] In so far as the deceased did put himself so close to the road that he ran the risk of being hurt if the car skidded off the road as it did, I am satisfied that he was contributorily negligent and I place that contributory negligence at 30%.

Summary

[214] The action against the first defendant is dismissed. The fourth defendant is liable in negligence on the basis of 70% with the plaintiff's son liable in contributory negligence to the extent of 30% with costs to be apportioned in the same ration.

[215] Lastly, I must express my gratitude to Counsel on both sides for their extensive and helpful written submissions.

Elneth O. Kentish
Judge of the High Court