

Summary of Evidence

File No 5463144

Overview

On the 29th March 2014 Bryan Forbes was struck by a solo speedway bike rider at the Meeanee speedway circuit. As a result Bryan **9(2)(a)**
9(2)(a)

Parties

New Zealand Speedway Incorporated is an incorporated society registered with the society's office.

Tim Savell is the CEO of Speedway New Zealand.

Hawkes Bay Speedway Club Incorporated (HBSC) is an incorporated society registered with the society's office

Peter John Black is the president of the Hawkes Bay Speedway club and was also the Clerk of the course on the day of the incident.

9(2)(a) is the Co-ordinator of solo bike racing at Hawkes by Speedway Club.

Bryan Forbes is the victim of this incident.

9(2)(a) is a Solo bike rider he was riding the bike that struck Bryan Forbes.

Meeanee Oval Track Promotions Limited is a limited liability company

Brian Strong is a director of Meeanee Oval Track Promotions Limited (MOTP)

Napier City Council is the owners of the land. (NCC)

Background

Hawkes Bay Speedway club Incorporation (HBS) normally promotes racing events at the Meeanee Speedway situated in Sandy Road Meeanee Napier. The season runs from October to April each year. HBS

The licence to promote racing in the Hawkes Bay was purchased by Meeanee Oval Track Promotions Limited as the promoter for the 2013/2014 season.

Accident

On Saturday 29th March 2014 Bryan Forbes has arrived at the Meeanee speedway at 1600 hrs. Bryan has started to set up for bike racing that is due to start at 1800 hrs. Racing has been delayed due to the ambulance not being on site. At 1830 hrs Bryan was told to start racing the first race started at approximately 1835 hrs. At approximately 1840 riders involved in the second race came out for their 2 warm up laps however it had been decided that they would only get one so as the first rider turned into the straight Bryan has started setting up the line the first rider has managed to avoid Bryan. At this point Bryan has become aware of something being a miss so has moved towards the start pole as this is the safest place. The second rider has come round the final bend behind the first rider, he has been unable to avoid Bryan as he was moving towards the pole. The rider has collided with Bryan.

Where Evidence Recorded & How Element Proved

Doli 10 Societies office documents

Email signature.

Doli 10 Societies office documents

Doli 11 HBSC Website information

Doli 9 **9(2)(a)** interview

Doli 9 **9(2)(a)**

Doli 10 Company extract

Doli 10 Company extract

Local Government Body Act

Doli 9 **9(2)(a)**
Doli 9 MOTP interview

Doli 10 received from MOTP
Doli 10 received from SNZ

Doli 7 Statement from Bryan Forbes in Bruce Greathead's notebook. p92.

Injuries

Bryan Forbes 9(2)(a)
9(2)(a)

Investigation

The investigation has posed challenges with most people un willing to speak with the inspectors. Some have implied that they have been instructed not to by members of Speedway New Zealand.

Facts

- Speedway events around the country are controlled and operated in accordance with Speedway New Zealand Inc. rules.
- SNZ rules stated in M5 Officials appointed by SNZ Board, and Non SNZ Officials.
SNZ Officials
 Stewards 9(2)(a)
 Referees 9(2)(a)
 Technical Officials (Unknown)
Non—SNZ
 Clerk of the Courses 9(2)(a)
 Chief lap scorer
 Starter (Bryan Forbes, and 9(2)(a)).
 Flag Marshalls
 Medical Officer
 Crash Crew
 Pit Marshall
 Competitor Representatives
 Mentor/coach
- SNZ officials will receive such remuneration as the board may decide.
- SNZ received payment from MOTP on the night of 29 March 2014.
- MOTP pay HBSC \$2000.00 per meeting to lease the track.
- Ambulance services were booked by Promotions Company Meeanee Oval. The booking was made for 1900 hours. Ambo records show they arrived at the park at 1845 hrs.
- Documents supplied by MOTP show that Solo racing was part of the main event for the evening and racing was to start at 1900 hrs.
- Napier City Council is the owners of the land. There is a lease agreement between NCC and HBSC.
- HBSC use volunteers to assist in the running of the different events. (AS per Constitution).
- Solo Bike events or coordinated by 9(2)(a) club member. 9(2)(a) has built the track and is tasked with its up keep. Racing is normally completed between 1800 and 1900 before the cars a scheduled to start at 1900.

Where Evidence Recorded & How Element Proved

Bryan Forbes interview
Doli 7

Doli 11 2013 rule book p9-13

Doli 11 page 47 of 2013 rule book.

SNZ Investigation report identifies people involved.

SNZ Rules M5-2-2 p 47.

Doli 10 Receipt from SNZ

Doli 10 Bank statements MOTP

Doli 10 Email from 9(2)(a) dated 17 June @1350 hrs.

Doli 11 MOTP Doc's of interest.

Doli 10 NCC lease agreement.

Doli 10 HBSC Constitution

Doli 9 Interviews Bryan Forbes and 9(2)(a).

- Statements taken from 9(2)(a) and Bryan Forbes indicate that the Referee has made a call to change the number of warm up laps from 2 to 1. The Referee has instructed the victim Bryan Forbes to set up the starting tap while the riders were completing their warm up laps.
- Warm up laps are used by riders to get a feel for the track and to make any last minute adjustments. A complete race is over in 3 minutes max.
- Bryan Forbes is not a member of HBSC his name does not show on the club membership lists from the website.
- Solo bike racing has been competing at Meeanee for the last 7 years and always run at 1800 to 1900 sometimes we will put the final in the middle of the car meeting if the promoter will allow it.
- Solo bike racing is not part of the 2014/2015 season.
- Time line statements found in Doli 11 are Facebook posting from 9(2)(a) passed to Worksafe at the time of the complaint.
- Attempts to gather a statement from the race Referee on the night (9(2)(a)) have been made by two different people. 9(2)(a) has made three different statements to these people. Firstly 9(2)(a) agreed to be interviewed and arranged to meet with H/S inspectors at 1900 on the night of 9 Oct 2014. Upon arriving at the meeting 9(2)(a) stated he had received a call from Mr Savell CEO of SNZ instructing him not to speak with the inspector. The second attempt 9(2)(a) stated he had been instructed not to speak by the president of SNZ David Jones. Third he stated that he has made a statement to SNZ on behalf of Worksafe NZ to 9(2)(a) Private Investigator hired by SNZ.
- The rider who hit Bryan agreed to be interviewed then changed his mind.
- Four attempts to interview HBSC president Peter Black were made. Three verbal and one written.
- Two attempts were made to interview SNZ officials 9(2)(a)
- Phone call with David Jones states he has not told anyone not to speak. Mr Jones stated that he had suggested that if anybody asked about the incident they should be directed to contact Tim Savell at SNZ.
- Mr Savell received a letter informing him of a possible obstruction charge upon receiving this letter he replied by email denying this claim he said that he had had no contact with any of the officials.
- 9(2)(a) sent a letter to SNZ Board on 11 March 2014 expressing concern about the manner and attitude of Referee 9(2)(a).
- SNZ supply a health and safety manual this health and safety policy states "SNZ is committed to the safety, health protection and welfare of members of the public, competitors and participants, employees, volunteers and subcontractors involved in speedway".

Where Evidence Recorded & How Element Proved

Doli 9 Interview Transcribes.

Doli 9 Interview 9(2)(a) 9(2)(a).

Doli 11 HBSC Website information.

Doli 7 9(2)(a).

Doli 9 duty holder interview MOTP

Doli 11 No contact whatsoever ... Document.

Doli 11 Inspectors Notebook Stuart Whyte and Nigel Formosa.

Doli 11 Inspectors notebook.

Doli 10 Letter dated 10 Oct 2014. Inspectors notebook Nigel Formosa and Stuart Whyte and Bruce Greathead

Doli 11 Notebook entry Bruce Greathead and Stuart Whyte

Doli 11 Notebook Stuart Whyte p 36 @ 1348 hrs.

Doli 11 Email dated 15/10/2014 @ 1002 hrs.

Doli 11 Complaint letter to SNZ from 9(2)(a)

Doli 11 SNZ Health and Safety Manual 2012. P 2

- Page 31 of the SNZ Health and safety Manual contains a fact sheet supplied by Department of Labour this fact sheet outlined enforceable duties of volunteers. The Fact sheet goes on to excluded all volunteers involved in assisting a sports club.
- Starters are required to set a starters tape by pulling it down a pole situated on both sides of the track. Bryan Forbes was on the outside pole and 9(2)(a) was on the inside pole. Once the tape is down Bryan moves to the inside of the track. The race starts by pushing a button releasing the tape up.
- The solo bike track is a smaller separated track situated on the inside of the main car track.
- The first rider that avoided Bryan was wearing a helmet camera. Footage from the camera shows the second rider colliding with Bryan and the pole.
- Some members of the HBSC do not want the solos bike riding as part of the main program. Some don't want them at the club at all.
- SNZ do employ, therefore owe duties under the HSE Act.
- SNZ rules require an ambulance to be on site before any racing starts. It is the responsibility of the Steward and Clerk of the Course to ensure this.
- MOTP is required to submit to SNZ booking details of the ambulance before the promoters licence is issued.
- The ambulance was booked for 1900 on the night of the 29th March 2014. Advertising document provided by MOTP show that the solo racing was included in the main program. Races 1, 5, and 9 consisting of 4 laps per race.
- All competitors and safety crews are required to attend a briefing before racing starts. The solo bike riders do not attend the meeting with other drivers they hold their own. SNZ rules require the steward to attend these meetings. The steward did not attend the solo bike briefing as she is attending the drivers briefing.
- Racing of the solo bike has started before the driver meeting was completed.
- The fire rescue captain (9(2)(a)) has had to leave the meeting with the promoter's wife 9(2)(a) and Health and Safety officer to get the rescue team into position before the first race.
- The fire rescue team have responded to the accident and provided treatment to Bryan until the ambulance has arrived. 9(2)(a) has written an incident report for the night and provided it to HBSC.
- 9(2)(a) has stated that the referee has also attempted to interfere when attempting the secondary survey before moving the victim. 9(2)(a) has argued with him and continued looking after Bryan. The Clerk of the Course (9(2)(a)) has called the ambulance using his cell phone.

Where Evidence Recorded & How Element Proved

- Doli 11 SNZ Health and Safety manual 2012. P 31
- Doli 9 9(2)(a) Bryan Forbes 9(2)(a).
- Site maps of Meeanee Speedway.
- Doli 11 CD.
- Doli 9 9(2)(a), 9(2)(a) 9(2)(a)
- Doli 10 SNZ website Info.
- Doli 11 SNZ rulebook 2013.
- Doli 9 MOTP Interview.
- Doli 11 Documents of interest.
- Doli 9 9(2)(a)
- Doli 9 MOTP interview
- Doli 9 9(2)(a)
- Doli 9 9(2)(a)
- Doli 11 Serious Incident report. Fire Rescue.

Where Evidence Recorded & How Element Proved

- St John records show the booked ambulance has arrived at the track at 1845. At which point **9(2)(a)** has handed over the treatment of Bryan.

Doli 10 St Johns Records.

Analysis

Hazard

Struck by moving vehicle.

Current state of knowledge

Speedway New Zealand believes they are exempt from the HSE Act. They have produced a letter dated 25 February 1997 from the Minister of Labour.

This letter is prior 2002 Amendment Act which included Section 3D protection of other volunteers.

Section 3C and 3D are unenforceable under the Act.

3D bestows a duty on the Inspector to assist the volunteer organisation in identifying significant hazards and ensuring they are controlled in accordance with sections 8-10 of the Health and Safety in Employment Act 1992.

Parties and Duties

Speedway New Zealand Incorporated: As an employer owe duties under the Health and Safety in Employment Act 1992. To assist an inspector exercising their powers of inquiry.

Practicable steps taken—

- Have supplied own investigation report.
- Supplied a printed copy of SNZ rule book highlighting
 - What constitutes speedway activity at speedway tracks.
 - Who can undertake this activity, i.e. a promoter with a memorandum of agreement
 - What constitutes a race meeting
 - The status of various types of officials.

Practicable steps not taken—

- Failed to provide all information required in the letter dated 21 August 2014.

These actions have obstructed an Inspector executing his powers under section 30 and 31 of the HSE Act.

Hawkes Bay Speedway Club Incorporated: are cleared of all duties under the Health and Safety in Employment Act 1992. By its constitution and activities as a sports club.

Conclusions

The immediate cause of this incident is the decisions made by the Referee, on the night of 29 March to start the solo bike racing before the programmed time. The Referee has also made changes to the number of warm up laps for the second Solo bikes race. He has also instructed the victim to perform his duties as the

**Where Evidence
Recorded & How
Element Proved**

starter while bikes are in motion on the track.

As a volunteer starter Bryan Forbes is required to follow the directions of the Referee **9(2)(a)** while solo bikes are on the track. The riders of the second race have entered the track from the pit area and started on their two warm up laps. As the first bike has turned into the final corner of the first lap The referee has instructed Bryan Forbes to set up the starters tape. The front rider has come out of the final corner and seen the starter's tape being pulled into position. He has then moved to the outside of the track to avoid hitting the tape and Bryan. The second rider in the race has come out of the final corner of lap one and looked up to fine the starter's tape in position. He has attempted to avoid the tape and hit the starter Bryan Forbes while he was standing by the outside pole.

The Referees actions on the night have played the biggest part in the contribution towards this accident. His action of instructing Bryan to set up the tape while bike are still moving has exposed Bryan to the significant hazard of being struck by a moving vehicle.

Under current legislation none of the companies identified during this investigation owe a duty of care to Bryan Forbes.

9(2)(a) as a volunteer to SNZ in a sporting activity cannot be prosecuted for his actions.

SNZ have assisted the inspector by providing some information therefore obstruction charges cannot be recommended.

Recommendations

Based on the reasons outlined above Worksafe NZ can take no further action over this incident. We wish Bryan all the best in his recovery. NFA Letters to be sent all parties.

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982