IN THE COURT OF APPEAL (CIVIL DIVISION)

BETWEEN

NHS FRIMLEY HEALTH FOUNDATION TRUST

Appellant

v.

LOLA GIORDANO

Respondent

INDEX TO RESPONDENT'S BUNDLE

ELLEN DEAN

Senior Counsel for the Respondent

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IN THE COURT OF APPEAL (CIVIL DIVISION)

BETWEEN

NHS FRIMLEY HEALTH FOUNDATION TRUST

Appellant

v.

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Respondent

RESPONDENT'S SKELETON ARGUMENT

Grounds of appeal

(1) Russell J erred in law because he failed to consider whether there was a sudden shocking event which violently agitated the mind (*Alcock v Chief Constable of South Yorkshire* [1992] 1 AC 310) in this case. The Trust submitted that childbirth does not automatically constitute a sudden, shocking event and a period of eight hours cannot be categorised as a sudden shocking event. On the facts, there was no relevant element that met the requirements of a shocking event which violently agitated the mind.

(2) Lola was not a secondary victim. While the Trust accepted that she was proximate in time and space and did perceive the events with her own sight and senses, they submit that Lola did not have a close tie of love and affection such that she could recover for psychiatric injury.

Ground 1 - Russell J did not err in law because he failed to consider whether there was a sudden shocking event which violently agitated the mind (Alcock v Chief Constable of South Yorkshire [1992] 1 AC 310) in this case.

1. In the Respondent's submission, if Russell J had considered whether there was a sudden shocking event which violently agitated the mind (*Alcock*), they

would have reached the same conclusion. The appeal should therefore be dismissed.

Submission 1 – the period of eight hours

2. The Trust submitted that a period of eight hours, over which the childbirth took place, cannot be categorised as a sudden shocking event.

3. One long-drawn-out experience of childbirth can be considered to be a sudden shocking event. In the case of *North Glamorgan NHS Trust v Walters* [2002] EWCA Civ 1792*,* Lord Justice Ward states in paragraph 34:

> *"It is a seamless tale with an obvious beginning and an equally obvious end. It was played out over a period of 36 hours, which for her both at the time and as subsequently recollected was undoubtedly one drawn-out experience."*

4. Although *Walters* deals with the mother as opposed to a distinct secondary victim, it can still be argued that the eight-hour period of childbirth can be categorised as a sudden shocking event.

Submission 2 – Childbirth as a shocking event

5. Childbirth does not automatically constitute a sudden shocking event. However, the events of this childbirth were not ordinary, as arguably has been shown by the clinical negligence claim brought successfully by Amelia Clark, the mother in this case. In addition to the control mechanisms set out in *Alcock, Liverpool Women's Hospital NHS Foundation Trust v Ronayne* [2015] EWCA Civ 588, in paragraph 41, Tomlinson LJ sets out:

> *"What is required in order to found liability is something which is exceptional in nature"*

6. The events of this childbirth were exceptional in nature, leading to life-saving treatment being required for both the mother and the baby. Therefore, while childbirth does not automatically constitute a sudden shocking event, this particular instance of childbirth can constitute a sudden shocking event.

Submission 3 – a triggering moment

7. If the court does not accept the eight-hour childbirth to be a sudden shocking event, the sight of the baby girl born lifeless, blue, and taken for resuscitation can be considered a sudden shocking event and the trigger in this matter.

8. In *RE (a minor) v Huddersfield and Calderdale NHS Foundation Trust* [2017] EWHC 824 (QB) Goss J in paragraph 44 states:

> *" The trigger has to be the direct experience of a life-endangering event and, in this case, this means the birth of a flat, apnoeic baby who then required skilled resuscitation to save her life and that had she not endured the same difficult delivery but had given birth to a pink and spontaneously-breathing infant she would never have developed."*

In paragraph 48, Goss J states:

> *"I find that the event was sufficiently sudden, shocking and objectively horrifying to reach the conclusion that the Fourth Claimant's claim for damages for nervous shock is established."*

9. In this case, the sight of the lifeless and blue baby girl is the trigger that caused the Respondent's PTSD and satisfies the requirement of a sudden shocking event.

10. In conclusion, the Respondent submits that the first ground of appeal should be dismissed.

Ground 2 – Lola was a secondary victim, and she did have a close tie of love and affection with the primary victim

11. In the Respondent's submission, Ms Giordano has a close tie of love and affection with Amelia and the baby such that she could recover for psychiatric injury. Accordingly, the court should uphold Russell J's decision and dismiss this appeal.

12. Lord Wilberforce stated in *McLoughlin v O'Brian*, at 422C, "the closer the tie (not merely in relationship, but in care), the greater the claim for consideration." It is submitted that Ms Giordano has a close tie with Ms Clark both in terms of relationship and care.

13. This is evidenced by the successful claim in *Calderdale* where the claimant in Ms Giordano's position was successful and was deemed to have had a "very close relationship" ([48]) with the primary victim. It is submitted that the lack of a biological relationship in this case is of no substantive difference and should not be a bar to the claim.

14. In *Alcock*, Lord Ackner said, at page 403G:

> *"…there can well be relatives and friends whose relationship is so close and intimate that their love and affection for the victim is comparable to that of the normal parent, spouse or child of the victim and should for the purpose of this cause of action be so treated."*

15. Ms Giordano's assumption of the role of Ms Clark's mother 14 years ago, and the continuation of said relationship, falls squarely within the purview of Lord Ackner's comments in *Alcock*.

16. Ms Giordano was Ms Clark's safe place, as she would often stay with her during relationship troubles. It is submitted that Ms Clark would not do this with someone she didn't have a close tie of love and affection with.

17. For the reasons set out above, Ms Giordano does have a close tie of love and affection with the primary victim. Accordingly, Russell J's decision should be upheld, and the appeal dismissed.

ELLEN DEAN
Senior Counsel for the Respondent
JAMES SINCLAIR
Junior Counsel for the Respondent

IN THE COURT OF APPEAL (CIVIL DIVISION)

BETWEEN

NHS FRIMLEY HEALTH FOUNDATION TRUST

Appellant

v.

LOLA GIORDANO

Respondent

RESPONDENT'S LIST OF AUTHORITIES

List of authorities

1. Alcock & Ors v Chief Constable of South Yorkshire Police [1992] 1 AC 310, 403G
2. Liverpool Women's Hospital NHS Foundation Trust v Ronayne [2015] EWCA Civ 588, [10]
3. North Glamorgan NHS Trust v Walters [2002] EWCA Civ 1792, [34]
4. RE & Ors v Calderdale and Huddersfield NHS Foundation Trust [2017] EWHC 824 (QB), [35], [36], [44], [48]
5. McLoughlin v O'Brian & Ors [1983] 1 AC 410, 422C

ELLEN DEAN
Senior Counsel for the Respondent
JAMES SINCLAIR
Junior Counsel for the Respondent

Rosamund Smith Mooting Competition 2022, Semi-Final 2

Moot problem

IN THE COURT OF APPEAL, CIVIL DIVISION

NHS Frimley Health Foundation Trust (Appellant) v Lola Giordano (Respondent)

1. In the early morning of 17 September 2019, Amelia Clark, a 31 year old pregnant woman, started experiencing strong contractions and her waters broke. She was 37 weeks gestation and had an uncomplicated pregnancy. Amelia contacted her local NHS Trust, the Appellant in this case, who advised her to make her way to the maternity unit. However, Amelia's partner, George Gleave, was on a night shift at the time she went into labour and could not be contacted until he finished his shift at 9am.
2. Being unable to drive to hospital herself, Amelia knocked on her neighbour's door and asked for her assistance. Amelia had known her neighbour, Lola Giordano, for many years, having grown up in the area since she was child. Lola had two adult children of her own and was a teacher, so Amelia thought that Lola would be a good backup birth partner. Amelia's mother died when she was 17 years old and Lola had taken on a role as Amelia's mother figure in the intervening years. Amelia sometimes even stayed with Lola when her and George had relationship problems.
3. Lola and Amelia drove to Frimley Park Hospital and arrived shortly after 1am, where Amelia was admitted to the labour ward. Amelia was placed under constant monitoring because her waters had broken. Amelia was experiencing severe pain and discomfort almost immediately following admission to the ward. Lola remained with Amelia throughout the morning as her labour progressed, witnessing Amelia's severe discomfort. Around 5am Amelia requested an epidural for pain relief, but the epidural fell out and had to be re-inserted. After 3 failed attempts at insertion, the epidural was abandoned. This was very distressing for Amelia who was screaming in pain and Lola was becoming concerned for Amelia's welfare.
4. Around 8.30am on the morning of 17 September 2019, the fetal heart rate monitor picked up a drop in the baby's heart rate, signifying that the baby was now in distress. An emergency call was triggered and doctors and nurses came rushing in the room.

The obstetric registrar examined Amelia and declared that the baby needed to be delivered in an emergency as the heart rate was not recovering. At this point, the registrar prepared Amelia for an instrumental delivery, using ventouse to deliver the baby. It took 3 attempts to do so and at 9.04am a baby girl was delivered.

5. The baby girl was born lifeless and blue and was immediately taken for resuscitation in one corner of the room. Amelia was screaming and trying to get to her baby but could not do so as she was suffering a severe postpartum haemorrhage and began to lose consciousness. Due to negligence in the performance of the instrumental delivery, Amelia had to be rushed to theatre for emergency life-saving treatment. At this point, Lola started to panic and did not know whether to stay with the baby or to be with Amelia. She was also responsible for calling George, Amelia's partner, to let him know what had happened and to tell him to make his way to the hospital.
6. The baby girl was successfully resuscitated and survived but with brain damage impacting her for the rest of her life. Amelia did recover from her haemorrhage but was in hospital for 2 weeks and subsequently suffered postnatal depression following her discharge from hospital. Lola experienced frequent flashbacks of the labour and the moment that the baby girl was taken for resuscitation. Lola suffered panic attacks and found it very distressing every time she saw the baby girl out walking with Amelia. Lola was subsequently diagnosed with Post Traumatic Stress Disorder.
7. A clinical negligence claim was brought against NHS Frimley Health Foundation Trust. The Trust accepted liability for the injury caused to the baby and Amelia during the birth but did not accept liability for Lola's injuries.
8. At first instance, Russell J held that the Trust were liable for Lola's psychiatric injury on the grounds that Lola was a secondary victim under the *Alcock* criteria (*Alcock v Chief Constable of South Yorkshire* [1992] 1 AC 310). She was proximate in time and space to the childbirth, witnessed the birth with her own sight, and, had a close tie of love and affection with Amelia as her neighbour.
9. The Trust appealed on the following grounds:
   (1) Russell J erred in law because he failed to consider whether there was a sudden shocking event which violently agitated the mind (*Alcock v Chief Constable of South Yorkshire* [1992] 1 AC 310) in this case. The Trust submitted that childbirth does not automatically constitute a sudden, shocking event and a period of eight hours cannot be categorised as a sudden shocking event. On the facts, there was no

relevant element that met the requirements of a shocking event which violently agitated the mind.

(2) Lola was not a secondary victim. While the Trust accepted that she was proximate in time and space and did perceive the event with her own sight and senses, they submit that Lola did not have a close tie of love and affection such that she could recover for psychiatric injury.

Moot problem set by:

Jaime Lindsey

Faculty of Law, Essex University

6 June 2022

[1992]

[HOUSE OF LO RDS]

ALCOCK AND O'fHERS — A PPELLANTS

AND

CHIEF CONSTABLE OF SOUTH YORKSHIRE POLICE — RESPONDENT

1990 June 19, 20, 21, 22, 25; July 31
1991 April 11, 12, 16, 17, 18; May 3
Oct. 7, 8, 9, 10, 14; Nov. 28

Hidden J.

Parker, Stocker and Nolan L.JJ.

Lord Keith of Kinkel, Lord Ackner, Lord Oliver of Aylmerton, Lord Jauncey of Tullichettle and Lord Lowry

Negligence—Foreseeability of consequential injury—Nervous shock—Disaster at football stadium caused by defendant's negligence—Relatives of victims at disaster or watching live television broadcasts or hearing radio reports—Whether nervous shock to victims' relatives reasonably foreseeable—Whether relationship sufficiently proximate

The defendant was responsible for the policing of a football match at which, as a result of overcrowding in part of the stadium, 9.5 people died and many more sustained crushing in juries. As the disaster became apparent live pictures of the events at the stadium were broadcast on television. The plaintiffs were all related to, or friends of, spectators involved in the disaster. Some witnessed events from other parts *of.* the stadium. One plaintiff, who was just outside the stadium, saw the events on television and went in to search for his missing son. Other plaintiffs were at home and watched the events on live television broadcasts or heard of them from friends or through radio reports but only later saw recorded television pictures. All the plaintiffs, alleging that the impact of what they had seen and heard had caused them severe shock resulting in psychiatric illness, claimed damages in negligence against the defendant. On the issue of liability the judge held that the category of plaintiffs entitled to claim damages for nervous shock included a sibling as well as a parent or spouse of a victim, and that those plaintiffs present in or immediately outside the stadium at the time of the disaster or who watched it live on television were sufficiently close in time and place for it to be reasonably foreseeable that what they had seen would cause them to suffer psychiatric illness. Accordingly, nine of the plaintiffs, who were either parents, spouses or siblings of the victims and who were eye-witnesses of the disaster or who saw it live on television, were held to be entitled to claim damages for nervous shock. The remaining six plaintiffs were excluded as claimants because they were in a more remote relationship or because they had heard about the disaster by some means other than live televison broadcasts. The Court of Appeal allowed the defendant's appeal and dismissed the unsuccessful plaintiffs' cross-appeal.

(…)

As regards claims by those in the close family relationships referred
F to by Lord Wilberforce, the justification for admitting such claims is the presumption, which I would accept as being rebuttable, that the love and affection normally associated with persons in those relationships is such that a defendant ought reasonably to contemplate that they may be so closely and directly affected by his conduct as to suffer shock resulting in psychiatric illness. While as a generalisation more remote
G relatives and, a fortiori, friends, can reasonably be expected not to suffer illness from the shock, there can well be relatives and friends whose relationship is so close and intimate that their love and affection for the victim is comparable to that of the normal parent, spouse or child of the victim and should for the purpose of this cause of action be so treated. This was the opinion of Stocker L.J. in the instant appeal, ante, p. 376E—c, and also that of Nolan L.J. who thus expressed himself,
H ante, pp. 384—385:

(…)

Neutral Citation Number: [2015] EWCA Civ 588

Case No: B2/2013/2430

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM LIVERPOOL COUNTY COURT
HIS HONOUR JUDGE GORE QC
1IR21287

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Wednesday 17th June 2015

Before:

LORD JUSTICE SULLIVAN
LORD JUSTICE TOMLINSON
and
LORD JUSTICE BEATSON

- -

Between:

Liverpool Women's Hospital NHS Foundation Trust	**Appellant/ Defendant**
- and -	
Mr Edward Ronayne	**Respondent /Claimant**

(Transcript of the Handed Down Judgment of
WordWave International Limited
A Merrill Communications Company
165 Fleet Street, London EC4A 2DY
Tel No: 020 7404 1400, Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

Charles Cory-Wright QC (instructed by **Hill Dickinson LLP**) for the **Appellant**
Amanda Yip QC and Simon Fox (instructed by **Maxwell Hodge Solicitors**) forthe **Respondent**

Hearing dates: 22 April 2015

- -

Judgment
As Approved by the Court

(…)

The law

10. It is common ground that on the points in dispute on this appeal the judge directed himself correctly in law, founding on *Alcock v Chief Constable of South Yorkshire Police* [1992] 1 AC 310 and *White*, above, by identifying the four requirements for recovery established by those authorities, *viz*:-

(a) The Claimant must have a close tie of love and affection with the person killed, injured or imperilled;

(b) The Claimant must have been close to the incident in time and space;

(c) The Claimant must have directly perceived the incident rather than, for example, hearing about it from a third person; and

(d) The Claimant's illness must have been induced by a sudden shocking event.

To this list the judge added a fifth requirement to which I have already adverted, that the Claimant must have suffered frank psychiatric illness or injury as opposed to what Lord Oliver described in *Alcock* at page 410E as

> "grief, sorrow, deprivation and the necessity for caring for loved ones who have suffered injury or misfortune [which] must, I think, be considered as ordinary and inevitable incidents of life which, regardless of individual susceptibilities, must be sustained without compensation."

(…)

Case No: B3/2002/0745 QBENF, Neutral Citation No. [2002] EWCA Civ 1792

IN THE SUPREME COURT OF JUDICATURE
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM QUEEN'S BENCH DIVISION
(Mr Justice Thomas)

Royal Courts of Justice
Strand, London, WC2A 2LL

Friday 6th December, 2002

B e f o r e:

LORD JUSTICE WARD,
LORD JUSTICE CLARKE
ANDSIR ANTHONY EVANS

- - - - - - -

NORTH GLAMORGAN N.H.S. TRUST

Appellant

- v -

CERI ANN WALTERS

Respondent

- - - - - - - - -

(Transcript of the Handed Down Judgment of
Smith Bernal Reporting Limited, 190 Fleet Street
London EC4A 2AG
Tel No: 020 7421 4040, Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

Stephen Miller Q.C. and Gregory Chambers (instructed by Welsh Health Legal Services) for the Appellant
Robert Weir (instructed by Hugh James) for the Respondent

J U D G M E N T
As Approved by the Court

(…)

34. In my judgment the law as presently formulated does permit a realistic view being taken from case to case of what constitutes the necessary "event". Our task is not to construe the word as if it had appeared in legislation but to gather the sense of the word in order to inform the principle to be drawn from the various authorities. As a word, it has a wide meaning as shown by its definition in the Concise Oxford Dictionary as: "An item in a sports programme, or the programme as a whole". It is a useful metaphor or at least a convenient description for the "fact and consequence of the defendant's negligence", per Lord Wilberforce, or the series of events which make up the entire event beginning with the negligent infliction of damage through to the conclusion of the immediate aftermath whenever that may be. It is a matter of judgment from case to case depending on the facts and circumstance of each case. In my judgment on the facts of this case there was an inexorable progression from the moment when the fit occurred as a result of the failure of the hospital properly to diagnose and then to treat the baby, the fit causing the brain damage which shortly thereafter made termination of this child's life inevitable and the dreadful climax when the child died in her arms. It is a seamless tale with an obvious beginning and an equally obvious end. It was played out over a period of 36 hours, which for her both at the time and as subsequently recollected was undoubtedly one drawn-out experience.

Neutral Citation Number: [2017] EWHC 824 (QB)

Case No: HO14X01554

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand. London, WC2A 2LL

Date: 12/04/2017

Before :

MR JUSTICE GOSS

Between :

RE (A minor by her mother and Litigation Friend LE)	**First Claimant**
sod LE	Second Claimant
DE	Fourth Claimant
CALDERDALE & HUDDERSFIELD NHS FOUNDATION TRUST	Defendant

Mr William Featherby QC and Miss Vanessa Cashman (instructed by Addies) for the Claimant
Mr John Whitting QC (instructed by Hempsons) for the Defendant

Hearing dates: 21st — 24th March 2017 inclusive and 28th March 2017

(…)

35. The recovery of damages for nervous shock as a secondary victim are governed by established legal constraints that have been laid down in ***Mcloughlin v. O'Brian*** [1992] 1 A.C. 410 and *Alcock v. Chief* ***Constable of South Yorkshire Police*** [1992] 1 A.C. 310 ('the control mechanisms'). They have been described as "arbitrary and pragmatic" (per Tomlinson LJ **in *Liverpool Women's Hospital*** *NHS Foundation Trust v Ronayne* [2015] EWCA Civ 588; [2015] PIQR P20 at paragraph 20). The necessary preconditions to establish a claim as a secondary party are: -

    a. a sufficient closeness both in tennis of love and affection to the person injured or killed and being in sight or sound of the directly injurious event giving rise to the tortious liability;

    b. the **induction** of psychiatric illness by shock, that is 'be sudden appreciation by sight or sound of a horrifying event which violently agitated the mind." **(per** Lord **Ackner in *Alcock*** (ante) at 401F).

36. In the case of *Liverpool Women's Hospital NHS Foundation Trust v Ronayne* (ante)
Tomlinson LJ emphasised that

> "A visitor to a hospital is necessarily to a certain degree conditioned as to what to expect, and in the ordinary way it is also likely that due warning will be given by medical staff of an impending encounter likely to prove distressing." (paragraph 21)

> "What is required in order to found liability is something which is exceptional in nature." (paragraph 41)

(…)

44. He also reports that PTSD *is* a condition that does not arise spontaneously but requires, as a triggering event, that the patient experiences a life-endangering event at first hand, in which either he/she or someone close at hand is directly endangered. The Second Claimant's own life was not endangered in her delivery above that of any obstetric risk but RE was very much in danger and it is likely that had there not been skilled medical assistance available immediately RE would now not be alive. He confirms that the trigger has to be the direct experience of a life-endangering event and, in this case, this means the birth of a flat, apnoeic baby who then required skilled resuscitation to save her life and that had she not endured the same difficult delivery but had given birth to a pink and spontaneously-breathing infant she would never have developed. He reiterates that:

> "The key trigger factor and necessary trigger factor for the PTSD was the hypoxic injury sustained to RE and LE's knowledge that her baby was in great danger."

(…)

48. The Fourth Claimant's witness statement describes the event in similar terms to that of her daughter. She was present throughout the birth and witnessed the aftermath. She, too, was convinced that RE was dead. There is agreement between the Consultant Psychiatrists that she has suffered PTSD as a result of observing the events of RE's birth. I am satisfied that her first-hand observation of the first 15 minutes of life, that is the period immediately following her birth, was the triggering event for PTSD. She has and had a very close relationship with the Second Defendant. It is not suggested on behalf of the Defendant that she was not sufficiently close in terms of relationship to RE and to the event to be capable of being a secondary victim. The oaly issue is whether the event was sufficiently horrifying to establish a claim. As in the case of the Second Claimant, I find that the event was sufficiently sudden, shocking and objectively horrifying to reach the conclusion that the Fourth Claimant's claim for damages for nervous shock is established.

(…)

A

[HOUSE OP LORDS]

McLOUGHLIN . . . **APPELLANT**

O'BRIAN Drszs . **RESPONDENTS**

B

1982 Feb. 15, 16, 17; May 6

Lord Wilberforce, Lord Edmund-Davies, Lord Russell of Killowen, Lord Scarman and Lord Bridge of Harwich

Negligence—Duty oJ care to whom?—Shock—PlaintiB' husband and children injured in road accident caused by defendants' negligence—Plainti B xubsequentl y told o] accident and taken to see /amify in *hospital—Whether newous shock reasonably* ***foreseeable—Whether dut*** *y 1 core owed to persons not* present *at* scene ***oJ accident—Polic y considerotionz***

C

The plainti8's husband and three children were involved in a road accident at about 4 p.m. on October 19, **1973,** when their car was in collision with a lorry driven by the first defendant and owned by the second defendants that had itself just collided with an articulated lorry driven by the third defendant and owned by the fourth defendants. The plaintiff, who was at home two miles away at the time, was told of the accident at about 6 p.m. by a neighbour, who took her to hospital to see her family. There she learned that her youngest daughter had been killed and saw her husband and the other children and witnessed the nature and extent of their injuries. She alleged that the impact of what she heard and saw caused her severe shock resulting in psychiatric ill-ness. In 1976. she began an action against the defendants *for* damages for personal injuries pleaded as shock and injury to health resulting in depression and change of personality affecting her abilities as a wife and mother. The defendants admitted liability for the death *ot* her daughter and the injuries suffered by her family but denied that the shock and injury to her was due to their negligence. At the trial, Boreham J. assumed, for the purpose of enabling him to decide the issue of legal liability, that the plainti8 had suffered the condition of which she complained, that that condition had been caused or contributed to by shock, as distinct from grief or sorrow, and that the plaintiff was a person of reasonable fortitude. He gave judgment for the defendants, holding that they had owed no duty of care to the plaintiff because the possibility of her suffering injury by nervous shock, in the circumstances, had not been reasonably foreseeable. The Court of Appeal dismissed an appeal by the plaintiff, holding that, although it was reasonably foreseeable that injury by shock would be caused to a wife and mother in the position of the plaintiff, it was settled law that the duty of care that was owed by the driver of a vehicle was limited to persons or owners of property at or near the scene of an accident and directly affected by his negligence, that considerations of policy limited the duty of care in that way and did not require it to be extended **and** that, accordingly, **since** the plaintiff had been two miles from the accident and had not learned of it or seen its consequences until two hours later, she was not entitled to recover damages for nervous shock.

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F

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(…)

shock " in its nature is capable of a8ecting so wide a range of people, a real need for the law to place some limitation upon the extent ot admissible claims. It is necessary to consider three elements inherent in any claim : the class of persons whose claims should be recognised; the proximity of such persons to the accident; and the means by which the shock is caused. As regards the class of persons, the possible range is between the closest of family ties—of parent and child. or husband and wif and the ordinary bystander. Existing law recognises the claims of the first: it denies that of the second, either on the basis that such persons must be assumed to be possessed of fortitude sufficient to enable them to endure the. calamities of modern life, or that defendants cannot be expected to compensate the world at large. In my opinion, these positions are justifiable, and since the present case falls within the first class, it is strictly unnecessary to say more. I think, however, that it should follow that other cases involving less close relationships must be very carefully scrutinised. I cannot say that they should never be admitted. The closer the tie (not merely in relationship, but in care) the greater the claim for consideration. The claim, in any case, has to be judged in the light of the other factors, such as proximity to the scene in time and place, and the nature of the accident.

(…)