

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 53316/2013

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
12/3/2015 <i>Elm bush</i>	

12/3/2015

In the matter between:

THOBILE MANJO

PLAINTIFF

and

PASSENGER RAIL AGENCY SOUTH AFRICA

DEFENDANT

J U D G M E N T

HEARD ON: 03 MARCH 2015

JUDGMENT ON: 12 MARCH 2015

KUBUSHI, J

[1] The factual matrix of this case is that on 26 June 2013 the plaintiff sustained bodily injuries when he fell off from a passenger train owned by the defendant and there and then operated by the employees of the defendant. The plaintiff's evidence is that he was at the time employed in Pretoria working for Impact. He stayed in Kalkfontein extension 2 in Tembisa. He travelled by train to and from work on a daily basis.

[2] On the day in question he boarded a train from Bosman station in Pretoria to Kalkfontein station. At Kalkfontein station he had to take another train which would take him to Limindlela station in Tembisa where he was to alight. When he boarded the train at Kalkfontein station it was very full. He could not get a seat. He thus stood in the middle of the train corridor opposite the train doors. He balanced himself by holding on to one of the train straps attached to a rail on the ceiling of the train. When the train started moving the doors were still opened and could not close because of the many people in the train.

[3] When the train changed rails whilst moving, he was pushed to the opposite door of the train which was open and he fell off the train onto the rail tracks. He does not remember what happened thereafter. He woke up in hospital where he was informed that he was brought to the hospital by Fanie. He does not know this Fanie and has never spoken to him. The plaintiff, a forty two year old man at the time of the incident, sustained serious bodily injuries as a result of the fall. He stayed in hospital for a month and some weeks before he was discharged. He went home to recuperate and did not report the incident either to the police or to the defendant. He is, therefore, claiming damages for the injuries.

[4] His wife testified on his behalf to confirm that she went to see him at the hospital and the plaintiff informed her that he was injured when he fell off a train. His wife was informed by their daughter that the plaintiff was in hospital.

[5] The defendant is denying the claim on the basis that the plaintiff was never involved in a train accident because such an incident was not reported and does not appear in its incident report books. The defendant pleads also that in the event the court finds that such incident occurred, the defendant was not negligent in the circumstances of this claim. Alternatively, it pleads that in the event that the court finds negligence on the part of the defendant that such negligence did not contribute to the plaintiff being pushed out the train. Further alternatively, it pleads that in the event the court finds such negligence to have contributed to the plaintiff being pushed, that in that event, the court should find that the plaintiff also contributed to the negligence and fault should be apportioned accordingly.

[6] The defendant called Mr Coetzee, an investigator who it entrusted with the investigation of the incident. According to Mr Coetzee's evidence, during his investigation he did not come across any report made of the incident. He checked the segment incident occurrence book in Kalkfontein and the occurrence book at the joint operations centre in Johannesburg and did not find such a report. His colleague Mr Shandung investigated the matter at the Tembisa hospital where he was told that a person fitting the name of the plaintiff was admitted at the hospital for an undisclosed diagnosis. He also investigated the matter by interviewing people in the vicinity of the area where the plaintiff resides. He talked to two people who claimed that they did not know the plaintiff. The third person he came across was the plaintiff and he left it at that. According to him, with the experience he has in such incidents, it is improbable that such an incident would happen and none of the defendant's staff members would be aware of it. At the time at which the plaintiff alleges the accident to have happened, around 17h30 and 18h00, there would have been about five trains moving around that area and it is improbable that none of the train drivers saw the plaintiff lying on the rails.

[7] At the commencement of the trial, the parties having agreed to separate the issue, the plaintiff's counsel applied for separation of the issues, I granted an order for the merits and quantum to be separated. The matter proceeds before me only on the merits and the *quantum* is postponed *sine die*.

[8] After the plaintiff closed his case, the defendant's counsel applied for the defendant to be absolved from the instance. I refused the application on the basis that there was evidence before me on which a reasonable court may find for the plaintiff and undertook to provide my reasons therefore in the main judgment.

[9] The defendant's application for absolution from the instance is based on what counsel referred to as contradicting versions put forward by the plaintiff. According to counsel there are two versions by the plaintiff, namely, his evidence that he was unconscious after he fell off the train and at the time he reached the hospital and the version stated in the medical report discovered by the plaintiff, in particular the TCM report, which states that the plaintiff 'came in' the hospital. The connotation put on the version in the TCM is that the plaintiff walked into the hospital without assistance.

[10] There is only one version of events presented in court and that is that of the plaintiff. What is contained in the TCM report cannot be regarded as a version presented by the plaintiff. The plaintiff specifically, when giving evidence in chief and even under cross examination, denied any knowledge of the contents of the medical report. He did not know who provided the information contained in the TCM report.

[11] The minutes of the pre-trial conference of 2 March 2015 states that the status of documents in the file will be what they purport to be without admitting the correctness of the documents and parties will still be entitled to call witnesses. The information therein is not correct until it is proven by the author thereof. The contents of an unproven document can only be accepted into evidence with the consent of all the parties. It being common cause that the plaintiff's counsel objected to the use of the TCM report by the defendant

and no witness was called to confirm the contents of that report the defendant cannot rely in its contents.

[12] It is not in dispute that the plaintiff suffered injuries. It is also not in dispute that he was admitted in Tembisa hospital as a result of the said injuries where he stayed for a period of over a month receiving medical treatment. What is in issue is what caused the injuries.

[13] The plaintiff's version is that he was on the train on the day in question; the train was crowded and he had to stand in the middle of the corridor opposite the doors; the doors could not close due to the many people in the train; when the train changed lanes he was pushed and he fell off the train and was as a result injured.

[14] The defendant's defence is that it is not liable because the plaintiff was not on a train and did not sustain his injuries by falling off a train. If he was on a train and had fallen off a train the incident would have been noted by the defendant's staff working at the station and/or driving other trains and would have reported the incident to either the segment or joint operations centre of the defendant.

[15] The *onus* is on the plaintiff and he must prove his case on a balance of probabilities. The judgment I was referred to by the defendant's counsel is apposite in the circumstances of the current case.¹

[16] The evidence of the plaintiff was to me satisfactory. He was able to relate his story with clarity and precision. He did not contradict himself either in his evidence in chief or under cross examination. There was also no contradiction between his evidence and that of his witness. He did not

¹ See Stellenbosch Farmers' Winery Group & Another v Martell Et Cie And Others 2003 (1) (SCA) at 14-15.

appear to me to be someone sophisticated enough to have drummed up a story that did not happen. I am therefore prepared to rely on his evidence.

[17] On the other hand, the evidence of the defendant's witness was not satisfactory. There were discrepancies in his evidence. Firstly, the version that his counsel put to the plaintiff during cross examination that the witness is the one who went to the hospital to investigate, turned out to be not the truth because a certain Mr Shandung is the one who went to the hospital. Secondly, his evidence is that the medical report stated that the plaintiff was not brought in by an ambulance but came on his own. This is clearly not the truth because the medical report does not specifically state that the plaintiff was not brought in by an ambulance nor does it state that the plaintiff came on his own. What is stated in the medical report is that 'he came in'. This does not mean that the plaintiff came in unassisted, it is possible that he came in with someone else.

[18] On the probabilities, I am of the view that all the defences raised by the defendant in this respect cannot be sustained. Firstly, the defendant's contention that the plaintiff was not on the train because he could not produce a train ticket is fallacious. This, as argued by the defendant's counsel is not a requirement for claiming. The plaintiff's evidence is that he was on a train on that day. This piece of evidence is corroborated by his unchallenged evidence that he worked at that time in Pretoria and used the train to commute between his place of employment and home.

[19] Secondly, the defendant's contention that the plaintiff could not have fallen off the train without other passengers falling off as well and thus causing a commotion, is speculative. There could have been other passengers who fell off as the plaintiff fell off the train but there is no such evidence before me to that effect.

[20] Thirdly, it is also speculative that if the plaintiff fell off the train and landed on the side of the rails other train drivers should have seen him and made a report. It is not known how long the plaintiff laid on the side of the rails after he had fallen off. There is no evidence as to how the terrain there

where he fell is like or whether where he fell he could have been visible to the other train drivers because it is not known where he fell.

[21] Lastly, the fact that the incident was not reported is not a ground for denying the plaintiff his right to claim for his injuries against the defendant. Mr Coetzee conceded under cross examination that there are a number of incidents where people are injured from falling off a train that go unreported and this might be one such incidents.

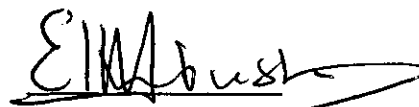
[22] When considering all the evidence tendered in court, probabilities are that the plaintiff was injured by falling off a train. The hospital record indicates as such. He made the same report to his wife when she visited him. If it is to be accepted that he was, at that time, working in Pretoria, probabilities are that at that time of the day, between 17h30 and 18h00, he must have been commuting from work to home. His uncontroverted evidence is that he used the train on a daily basis to commute between Pretoria and Kalkfontein where he stayed. Even though a ticket for this trip was not discovered, he persistently stated that he had a ticket – this was also not challenged.

[23] There is no evidence before me as to how the plaintiff could have negligently contributed to the injuries he sustained. The defendant is therefore 100% liable for such damages.

[24] The plaintiff as the successful party is entitled to his costs of suit.

[25] Consequently I make the following order

- (1) The plaintiff succeeds 100% in his claim.
- (2) The defendant is to pay 100% of the plaintiff's agreed or proven damages.
- (3) The defendant is to pay costs of suit.



E. M. KUBUSHI

JUDGE OF THE HIGH COURT

Appearances:

On behalf of the plaintiff:

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Instructed by:

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On behalf of the defendant:

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