

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 27470/2021

(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED: YES /NO
31 July 2024	
DATE	SIGNATURE

In the matter between:

DAVID SIBULAWA

Plaintiff

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Defendant

JUDGMENT

Mazibuko AJ

Introduction

- 1 The plaintiff instituted an action against the defendant, the Passenger Rail Agency of South Africa ("PRASA"), in which he claimed damages for injuries

he sustained in a train incident on 2 December 2019 at Grasmere train station, Johannesburg.

2. The defendant provides rail commuter services within South Africa.
3. The plaintiff's case is that he bought a train ticket and boarded the train. The train was overcrowded. During the duration of his journey, the train carriage doors remained open whilst the train was in motion. At Grasmere train station, the jostling of other commuters for space, preparing themselves to disembark, resulted in the plaintiff being pushed out of the moving train. He fell and injured his leg.
4. At the commencement of the trial, and by agreement between the parties, the court granted an order separating the issues in terms of rule 33(4)¹ of the Uniform Rules of Court on the basis that the issues relating to liability would first be determined and the remaining issues would stand over for later determination.

Litigation history

5. In April 2024 the matter served before me for trial. The plaintiff adduced evidence, testified and called a witness. It closed its case. The defendant's application for absolution from the instance was dismissed through a written judgment under the above-mentioned case number.

Evidence

Plaintiff's case

6. According to the plaintiff, the defendant breached its legal duty. Alternatively, the defendant owed a duty of care to members of the public, including himself. Paragraph 6 of his particulars of claim read:

"6.1 The defendant failed to ensure the safety of members of the public on the train and, in particular, that of the plaintiff as a commuter;

¹ Uniform Rules of Court, Act 59 of 1959.

- 6.2. *The defendant failed to take any or adequate steps to avoid the circumstances in which the plaintiff was injured when, by exercise of reasonable care, they could or should have done so;*
 - 6.3. *The defendant failed to take any adequate precautions to prevent the plaintiff from being injured in the aforesaid circumstances;*
 - 6.4. *The defendant failed to employ employees, alternatively failed to employ an adequate number of employees to guarantee the safety of commuters in general and the plaintiff in particular, on the commuter train in which the plaintiff was travelling as a commuter;*
 - 6.4. *The defendant failed to employ employees, alternatively, failed to employ an adequate number of employees to prevent commuters and intended commuters from being injured in the manner the plaintiff was injured."*
7. In support of its case, the plaintiff testified and called one witness, Mr Kananelo Rankhoana (Mr Rankhoana).

The plaintiff

8. The plaintiff testified that he boarded a train at Park Station to disembark at Grasmere train station. When the train reached Lenasia train station, it stopped, and all commuters were instructed to disembark and get onto another train because of what was referred to as an *all-change*.
9. They got into another train as instructed. The train became overcrowded because of an *all-change*, and all seats were occupied. Some passengers, including the plaintiff, stood beside the opened door. The plaintiff could not hold to anything in the train, be it a steel bar or belt normally hanging, as the belts were not there. Other passengers stood balancing against each side of the door as the doors were not closed. The train doors were not functional.
10. When the train approached the Grasmere train station platform, passengers moved closer to the doors and started pushing each other from behind so they could get ready to disembark. In the process, the plaintiff, who was standing

next to the doors, was pushed from behind and fell out of the train, which was still in motion with open doors, and he sustained injuries.

11. Under cross-examination, he was asked whether he knew the capacity of the number of people the coach could accommodate to conclude that the coach's capacity was exceeded and, therefore, overcrowded. He answered that he did not know. He testified that the train remained overcrowded, though commuters were embarking and disembarking in the three stations between Lenasia and Grasmere train stations. No security guards controlled the commuters' embarking on the train that the plaintiff boarded at Lenasia train station.
12. He stated that though he had no technical skill to conclude that the train doors were not functional. However, under normal circumstances, the doors would attempt to close, and commuters would force them open, and that did not happen on the date in question.
13. He was referred to a referral note, referring him from Lenasia Clinic to Chris Hani Baragwanath Hospital ("*Bara*") under clinic history and examination, where it reads: '*Male patient pushed off train when disembarking.*' The plaintiff clarified that he had not completed the referral letter, but the nurse had. He did not know what they wrote as he would tell them, and they would be writing. He insisted he was pushed off the train before it could stop at Grasmere train station.

Mr Kananelo Rankhoana

14. Mr Rankhoana testified that he boarded the same train as the plaintiff from Lenasia train station, travelling to Grasmere train station. He was standing not far from the plaintiff. The train was overcrowded. There were no empty seats. The train remained full, and so did its doors throughout his journey until he disembarked at the Grasmere train station.
15. When the train approached Grasmere train station, passengers came close to the doors, preparing to disembark, and the plaintiff, who was next to the doors, was pushed in the process and fell out of the train, which was still in motion with

its doors opened. He then rushed to assist the plaintiff, who was lying down with a broken leg. Later, together with another passenger, he took the plaintiff to a nearby taxi rank so he could be transported to the clinic for medical assistance. The plaintiff was taken to Lenasia Clinic, now known as Lenasia South District Hospital.

16. The plaintiff closed its case. As indicated above, the defendant's application seeking to be absolved from the instance was refused.

Defendant's case

17. In its defence, the defendant called one witness, Dr Mokgadi Nobantu Malika (Dr Malika), the Clinical manager at Lenasia South District Hospital. She testified that as a clinical manager, she plays an oversight and supervision role for junior doctors. She oversees the functioning of the X-ray department and is a custodian of medical records. Her evidence was that the treating doctor completed the referral form. Under cross-examination, Dr Malika conceded that she assumed that what was on the referral letter was what the plaintiff informed the doctor who was treating him. He was not the treating doctor who examined the plaintiff and wrote the referral letter.
18. The defendant argued that the train was stationary when the plaintiff was allegedly pushed by fellow passengers boarding and disembarking the train. Further, there are two irreconcilable versions; during examination in chief, the plaintiff testified he was pushed from the moving train with its doors open by passengers who were jostling for space. Under examination in chief, he stated he was disembarking the train when other passengers pushed him.

Issue

19. The issue for determination is whether the defendant is delictually liable to compensate the plaintiff.

Discussion

20. To answer whether the defendant was negligent depends on whether its conduct in the circumstances fell short of that of a reasonable person. The test

for negligence was set out in **Kruger v Coetzee**², where it was said:

"For the purposes of liability, culpa arises if -(a) a diligens paterfamilias in the position of the defendant – (i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and (ii) would take reasonable steps to guard such occurrence; and (b) the defendant failed to take such steps."

21. The defendant has a legal duty to protect passengers against physical harm while using its trains. The said duty stems from an existing relationship between the said passengers and the defendant. It is also said to stem from the defendant's public law obligations.³ A breach by the defendant of aforesaid duties is delictual wrongful and may, depending on the circumstances, attract liability for damages.
22. The defendant did not contend with the plaintiff's version regarding the circumstances under which he commuted from the Park station until the accident at Grasmere. The defendant called no witnesses to challenge the plaintiff's version in this respect. It was not contended by the defendant that the train was overcrowded, and its doors remained open throughout the plaintiff's journey whilst the train was in motion. The plaintiff and other commuters could not hold to anything, be it a steel bar or belt normally hanging, as the belts were not there.
23. The defendant, under cross-examination, questioned the plaintiff about how he knew the train was overcrowded without knowing its capacity. The plaintiff accepted that he did not know the capacity and maintained that the train was overcrowded. According to Mr Rankhona, no seats were available for one to sit in. The passengers were standing inside a moving train whose doors were opened.

² [2021] ZASCA 125,1966 (2) SA 428 (A) at 430.

³ *Mashongwa v Passenger Rail Agency of South Africa* 2016 (3) SA 523 (CC) para 20.

24. The defendant did not challenge the plaintiff's evidence that no security guards were controlling the embarking and disembarking of commuters.
25. The defendant adduced no evidence as to how the plaintiff failed to heed the precautionary measure displayed on the defendant's premises for safe commuting. The evidence of Mr Rankhoana was that there were no officials at the station, so he went to look for them so he could report the accident and be assisted in helping the plaintiff with his injuries.
26. I accept that the train was overcrowded since people were on their feet, and according to Mr Rankhoana, no seats were available for one to sit. I find it probable that due to the overcrowded train and the opening of the train door, whilst it was in motion, the passengers jostled to be by the train door in preparation for them to disembark. While that was happening, the plaintiff was pushed out and suffered the said injuries.
27. The defendant was required to provide a safe train with functional doors that could close and open when necessary. The evidence is that the doors remained open whilst the train was in motion, exposing the passengers to the risk of being thrown out of the train whilst in motion. I have no basis to accept the defendant's contention that the plaintiff disregarded lawful instructions by the defendant's official for safe commuting as the evidence is that there were no officials, especially the security guards.
28. The defendant also argued that the plaintiff gave two versions of how he was injured: one that he was pushed off the train when disembarking and another that he was pushed off the train while it was in motion. It relied on the medical referral notes from Lenasia South District Hospital, which noted, '*Male patient pushed off the train when disembarking.*' The defendant did not call the doctor who referred the plaintiff to Bara, who wrote the notes. No application was made seeking the medical notes' admission as evidence in terms of section 3 of the

Law of Evidence Amendment Act.⁴ The evidence of Dr Malika in that regard remains hearsay.

29. I find that the defendant failed to ensure that the coach's doors remained closed while the train was in motion. The defendant failed to ensure that commuters and the plaintiff did not fall from the moving train, as claimed in the plaintiff's particulars of claim. Consequently, the defendant was negligent, which was the sole cause of the plaintiff's injuries. It acted wrongfully and negligently in allowing the train to travel with its doors open, and such fault was causally related to the plaintiff's injuries. I find that the plaintiff discharged the onus resting upon him of proving on a balance of probabilities that the defendant was negligent.

30. In the premises, the following order is made:

Order:

1. The defendant is liable for 100% of the plaintiff's proven and agreed damages.
2. The defendant is to pay the costs of suit.



N. Mazibuko

Acting Judge of the Gauteng Division, Pretoria

This judgment was handed down electronically by circulation to the parties' representatives by email.

⁴ Act 45 of 1988.

Representation:

Counsel for the Plaintiff:

Mr NC Rangululu

Attorneys for the Plaintiff:

Mashapa Attorneys

Counsel for the Defendant:

Mr L Mgwetyana

Attorneys for the Defendant:

Ngeno & Mteto INC

Heard:

26 June 2024

Date of Judgment:

31 July 2024