

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION PRETORIA

CASE NO: 27469/2021

- (1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

SIGNATURE

DATE

20/9/2024

In the matter between:

SIFISO HLAZO

PLAINTIFF

and

THE PASSENGER RAIL AGENCY SOUTH AFRICA

DEFENDANT

This Judgment was handed down electronically and by circulation to the parties' legal representatives' by way of email and shall be uploaded on caselines. The date for hand down is deemed to be on 20 September 2024.

JUDGMENT

Mali J

- [1] The plaintiff instituted legal proceedings against the defendant (PRASA), a company with a limited liability registered in terms of the laws of the Republic of South Africa for damages arising from injuries he sustained on 4 March 2019 at Elandsfontein train station. The plaintiff sustained injuries as a result of being pushed out of a moving train.
- [2] The defendant denies liability. This court is enjoined to determine the issue of liability as the question of quantum was separated by agreement of the parties in terms of the provisions of Rule 33 (4) of the Uniform Rules of this Court.
- [3] It is not in dispute that the plaintiff got on board a train from Tembisa Station, the crux of defendant's defence is that the plaintiff possessed a train ticket which entitled him to travel between Tembisa station and Isando Station. The alleged accident occurred in Elandsfontein station, a station beyond Isando station, where the plaintiff was supposed to disembark. According to the defendant the plaintiff jumped off the moving train.
- [4] The plaintiff does not deny that he did not disembark at Isando, he testified that as the train got to other stations it kept on being overloaded. His version is that when the train reached Isando he could not get off as he was far from the train's door and passengers were pushing from different directions jostling to get off. He could not push enough as he was wary of getting injured. As he missed his destination, he got closer to the door in order to disembark at the next station, Elandsfontein. As he was standing, other passengers commenced jostling, in that process he was then pushed off the train to the platform.
- [5] The plaintiff stated that he did not know how he fell, he only realised that he was pushed off when he found himself sitting on the ground close to the train doors

being questioned by a train official. He denied that he informed the train official, the defendant's witness, Mr Mokgadi Silas Hloka ("Mr Hloka") that he was asleep and as a result missed his destination. The plaintiff further disputed that he told Mr Hloka that he informed him he had jumped from the moving train. The plaintiff insisted that he was pushed when he tried to disembark.

- [6] Mr Hloka could not confirm that the doors of the train were opened. He also testified that for the plaintiff to have been pushed from the moving train the doors had to be open. Mr Hloka stated that he was the one who completed the liability report at the scene. The number of the train ticket on the liability report is 26671, whereas the one discovered in court is 26674. He could not explain the contradiction except to insist that everything he recorded was correct despite this glaring contradiction. Furthermore, he contradicted himself about when the ambulance arrived at the scene, he first stated that the ambulance arrived immediately and later said it arrived after three hours. Mr Hloka's demeanour was not satisfactory at all, when asked about the negligence in recording the information he simply shrugged off the matter.

- [7] It is common cause that the parties have presented evidence of conflicting versions; the plaintiff stating that he was pushed from an overcrowded moving train. On the other hand, the defendant's case is that the plaintiff told Mr Hloka that he jumped from the moving train as he wanted to disembark. For this reason, the Court should assess the credibility and reliability of each of the witnesses whose evidence was led. This approach is articulated in the cases of *Stellenbosch Farmers' Winery Group Ltd and Another v Martell Et Cie and Others* 2003 (1) SA 11 (SCA) para [5]; *Santam Bpk v Biddulph* [2004] 2 All SA 23 (SCA) at para [6] and *National Employers General Insurance v Jagers* 1984 (4) SA 437 (E) at 440D-G.

- [8] The plaintiff was found with a train ticket which had Isando as his destination, something he did not deny. He gave a clear and satisfactory explanation as to why he could not disembark at Isando. According to him he was standing for the duration of his journey as the train was overcrowded. He could not have informed

the defendant's witness that he was asleep when he could not get off at his destination.

- [9] The defendant's only witness could not confirm that the train was not overcrowded and that the doors were firmly closed. He even confirmed that it is common practice for the passengers who were in the position of the plaintiff to disembark at the next station and board the returning train. This is a general accepted practice, as long as the passengers did not leave the premises of the next station. It could not have been difficult for the defendant to adduce sufficient evidence by calling the train driver to collaborate his evidence, in particular that the train was not overcrowded. Mr Hloka's contradictory statements about the time of the arrival of the ambulance impacts negatively on his credibility.
- [10] Furthermore, the gross negligence of the defendant's witness in compiling the report is telling. His demeanour in the witness stand was not satisfactory at all. When he was repeatedly asked about the very material contradiction pertaining to the ticket numbers, he looked around the court room and later shrugged his shoulders. He failed to explain why he recorded the incorrect number. The fact that he stated that he recorded what the plaintiff told him, it cannot be ruled out that he made up the story on behalf of the plaintiff. He is found not to be a reliable witness at all. On a balance of probabilities, the evidence suggests the plaintiff was pushed as the train doors were opened, whilst the train was in motion.
- [11] In *Mashongwa v Prasa (Mashongwa)*¹ 2016 (3) SA 528 (C C) the court held as follows:

"Public carriers like PRASA have always been regarded as owing a legal duty to their passenger to protect them from suffering physical harm while making use of their transport services. That is true of taxi operators, bus services and the railways, as attested to by numerous cases in our courts. That duty arises, in the case of PRASA from the existence of the relationship between carriers and passengers, usually, but not always based on a contract. It is also stems from its public law obligation. This merely strengthens the contention that a

¹ 2016 (3) SA 528 (C C) para 20

breach of those duties is wrongful in the delictual sense and could attract liability for damages." In Mashongwa the apex court by unanimous decision conclusively pronounced that PRASA's failure to ensure the doors of a train are closed whilst in motion was negligent.

[12] Having regard to the above the plaintiff has successfully proven the negligence of the defendant. Therefore, the defendant is 100% liable for the damages suffered by the plaintiff.

ORDER

In the result the following order shall issue:

1. The defendant be and is hereby held liable to pay the plaintiff such sum of damages as may be proved at the trial in due course.
2. The defendant to pay costs of the trial on the liability issue.



N.P. MALI
JUDGE OF THE HIGH COURT

APPEARANCES:

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Date of final Heads of Arguments: 11 June 2024