

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

Case Number: 73425/16

(1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED: NO

04 November 2024  
DATE

\_\_\_\_\_  
SIGNATURE

In the matter between

**MM SIBANYONI**

Plaintiff

And

**PASSENGER RAIL AGENCY OF SOUTH AFRICA**

Defendant

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**JUDGMENT**

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Mahosi J

Introduction

[1] This is an action in which damages are sought for bodily injuries. It raises the question of whether the Passenger Rail Agency of South Africa

("PRASA") has a legal duty to act positively to prevent physical harm being sustained by train passengers who are pushed out of a moving train.

[2] The plaintiff is Mr M Sibanyoni, an adult male residing in SOWETO and the respondent is PRASA, a state-owned enterprise responsible for passenger rail in the country.

[3] The parties separated the issues relating to merits and quantum by agreement. Accordingly, the issue pertaining to the quantum was postponed *sine die*. The only issue for determination is whether PRASA is liable for the bodily injury sustained by Mr Sibanyoni.

#### Factual background

[4] On 12 June 2015, Sibanyoni was travelling on a train from Merafe Station in SOWETO to Park Station. When the train was still in motion and about to stop at New Canada station, the commuters started pushing and shoving each other and Mr Sibanyoni was pushed out and fell on the platform. Resultantly, he sustained bodily injury and was admitted to Baragwanath Hospital. It was for this reason that he instituted this action.

#### Sibanyoni's case

[5] Sibanyoni submitted that PRASA had a legal duty to passengers, and in particular him, travelling between Park Station and Naledi Station, to ensure, inter alia, that trains were regularly maintained in a state that would not cause danger to passengers, sufficient measures were established, implemented and maintained to control the number of passengers on any particular train and platform at any particular time; trains and platforms when not overcrowded; its officials did not create or contribute towards the creation of a dangerous situation; and generally that it established, implemented and maintained such measures, and that such steps were taken, as may be reasonably necessary and required in the circumstances, to prevent passengers travelling on the PRASA trains, from suffering harm.

[6] He contends that PRASA and its officials, acting within the course and scope of their employment and in furtherance of their duties, breached their legal duties and were negligent. This resulted in him sustaining severe concussive head injuries and a fracture of the skull when he was pushed out of an overcrowded train with compartment doors open while in motion.

#### PRASA's case

[7] PRASA denied that the cause of this incident was due to the sole negligence of its employees or agents. It avers that its employees did not breach the alleged duty of care owed to Sibanyoni as alleged in his particulars of claim, and the incident was caused by his exclusive negligence in that he failed to avoid it and to keep a proper lookout. Alternatively, if the Court finds that it breached its duty of care, PRASA pleaded that such breach or negligence was neither the cause of the incident nor that same contributed thereto.

#### Issue for determination

[8] The parties outlined in the pre-trial that the Court had to determine whether the incident occurred. If so, whether PRASA and its officials had a legal duty to establish, implement and maintain measures reasonably necessary to prevent passengers travelling on its trains from suffering harm. If so, is PRASA, in the circumstances, liable for Sibanyoni's injuries? To answer the question, the Court must determine whether PRASA, acting through their officials and agents, were negligent.

#### Relevant evidence

##### *For Mr Sibanyoni*

[9] Mr Sibanyoni testified that he worked as a gardener in Bedfordview for about two years ago. During his employment, he used the train to travel from his home in Soweto to work almost daily. For that reason, he purchased a monthly train ticket. He took the train at Merafe Station in Mapetla Soweto and alighted at Johannesburg Park Station, where he caught a second train to

Geldenuys Station, which was within walking distance of his workplace. Based on his regular train usage, he knew the trains he needed to catch were series 93 or 94.

[10] On the day of the incident, on 12 June 2015, Sibanyoni travelled by train with Phillip and Jacob to Bedfordview. They worked until late afternoon and took a train from Geldehuys to Park Town, where they would make a changeover. The train they took was full of people travelling to Soweto and Vereeniging, and when it got to New Canada Station, commuters travelling towards Vereeniging had to alight to get on another train. The doors of the train used to be open during those days. There was pushing and shoving on the train. As he was standing in the middle of the compartment, he could not hold on to any handrail. The commuters who were meant to change over, as they rushed to get off the train, pushed him outside and he fell onto the platform facing down and could not move his left hip side.

[11] Phillip and Jacob called Mr Tshepo Xaba ("Tshepo"), who lived in Pennyville near New Canada, to alert him of the incident and to assist with transportation. Upon Tshepo's arrival, they all took Sibanyoni into Tshepo's car and rushed him to Baragwanath Hospital, where he was admitted to the trauma ward from 12 June to 16 June 2016. His hip nerve was injured, and he could not walk properly. After being discharged, he did not return to work as he was on crutches and attended physiotherapy at Mofolo. He did not report the accident because he did not know that he had to. He also did not talk to anyone at PRASA because he did not know anyone there. A person he knew, Sgwebu, saw him walking on crutches and referred him to lawyers.

[12] Under cross-examination, Sibanyoni confirmed that he was standing in the middle of the compartment, while Phillip and Jacob were standing on the sides. When he was pushed, the train was still in motion, but it stopped at the end of the platform. When Phillip and Jacob got off the train to assist him, the train was still there. He confirmed that PRASA had no record of the accident because he had not reported it to them. When he was challenged that Prasa guards indicated that there was no person who got injured on the day, his

response was that Tshepo and Phillip took him to the Hospital swiftly. He also could not remember the series number of the train that was involved.

[13] Tshepo testified and confirmed the call made to him on 12 June 2015, during which he was requested to drive to New Canada Station to assist Sibanyoni, who was injured. He asked them to wait for him at the entrance to the station because the station was busy in the afternoon. When he got there, he found Phillip waiting for him. They then proceeded to where Sibanyoni was. As they were walking, Phillip explained how the incident occurred. When they got to the platform, they found Sibanyoni with blood all over his face, and he was crying and complaining that his whole body was painful. No other people were on the platform, and they saw no SAPS or PRASA personnel. They picked him up, exited the station, and drove to the Hospital. At the Hospital, he gave the information to the hospital official, who opened the file and asked him to explain how Sibanyoni got injured.

[14] Under cross-examination, Tshepo testified that he provided Sibanyoni's information to the hospital official, whose name he did not know when the file was opened. He did not provide his name because the hospital official did not ask for it. When asked why his name was not written when the form required that the person who brought an injured person be noted, Tshepo responded that he would not know. He conceded that he had not witnessed the incident and gave the hospital official information that he had heard from somebody else. He did not give information regarding next of kin because it was unknown to him. Further, he would not know what should be in the hospital records and relied on the assistance of the hospital personnel.

[15] Phillip testified that Sibanyoni was his cousin and knew Tshepo, also Sibanyoni's cousin. He corroborated Sibanyoni's and Tshepo's evidence. He stated that although he was also pushed, he held on to the iron bar. After Sibanyoni fell, other commuters jumped over him and others stumbled over him. He and Jacob waited for the train to stop so that they could get off. They found Sibanyoni bleeding, lying on the platform. Jacob asked him how he was feeling. He then took out his phone and called Tshepo. He could identify the

station's exit, platform, and where they found Sibanyoni from the photos. He did not see any PRASA officials.

*For PRASA*

[16] Ms Mayihlole testified that she was an employee of Vusisizwe Security Company. On 12 June 2015, she was deployed as a security officer at New Canada station. She was responsible for guarding services and taking care of platforms, and her shift was from 06h00 to 18h00. She disputed the incident as alleged by Sibanyoni and the absence of security guards on that day as she was there with her colleague Ms Khulisile Jona, who was unable to testify because she was kidnapped and on sick leave. Other personnel and platform observers were available and were on duty on the day in question. She denied that there was someone who entered the station without a train ticket, as the platform observers and ticket examiners made it impossible to enter the station between 15h00 and 18h00 without a ticket.

[17] She conceded that there were instances where people were pushed out of the train, and other commuters screamed and shouted while others approached the office to report the incident. The practice was that she and other guards attended to the victim and called a monitor who would be situated in New Canada. They reported the incident and called an ambulance to attend to the victim. Under cross-examination, she confirmed that the New Canada station had eight platforms, and during rush hours, she could not see all platforms simultaneously. She was certain that the incident did not happen because, considering the time the incident occurred, it being rush hour, the commuters would usually scream, triggering her attention to the scene. She said PRASA personnel are always available at the New Canada station. Further, commuters could not ignore such an incident and not scream. She disputed that the train doors are open while the train is moving but conceded that she did provide an Occurrence Book (OB) and a pocketbook in which he recorded the occurrences of the day in question.

[18] Mr Bezuidenhout was employed at PRASA as an Investigation Officer and his duties were to investigate claims for risk insurance, crime

investigation and internal investigation. He was responsible for Vereeniging, Krugersdorp, Johannesburg and Soweto. He looks at other steps to establish the legitimacy of the case. They should submit the report to the risk insurance, wait for instructions, check who was on duty, interview them, check the site entry book and look at the Joint Operation Book (JOB).

[19] Sibanyoni's case was assigned to him to investigate, and he sought to establish if the case was legitimate and to check the OB book at the operation centre. He only interviewed one guard since the other was on sick leave. He could not find the ticket officer on duty that day, nor did he find any records. The only reason he denied that the incident occurred was that it was not reported. He did not have sight of hospital records because they were not given to him. He conceded that PRASA had previously had an incident that was not reported, which turned out to be valid. Further, entering the station through the main entrance was possible without a ticket.

#### Applicable law

[20] The test applicable in an action for damages alleged to have been caused by PRASA's negligence has been stated by the Supreme Court of Appeal in *Groenewald v Groenewald*<sup>1</sup> as follows:

"In delictual claim of the nature involved in the present case two separate questions arise:

1. Was the defendant at fault?
2. For what consequences caused to the plaintiff in consequence of the defendant's conduct is the defendant liable in damages to the plaintiff?

For the purpose of answering the first question the defendant would be held to be at fault as long as he intended to cause harm to the plaintiff, even if he did not intend that the consequences of such conduct would be to cause the kind of harm actually suffered by the plaintiff or harm of that general nature. He would also be held to be at fault if the reasonable person in the position of the defendant would have realised that harm to the plaintiff might be caused

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<sup>1</sup> 1998 (2) SA 1106, at 1112G-J

by such conduct, even if he would not have realised that the consequences of that conduct would be to cause the plaintiff the very harm he eventually suffered or harm of that general nature.”

[21] In *Sea Harvest Corporation (Pty) Ltd and another v Duncan Dock Cold Storage (Pty) Ltd*<sup>2</sup>, Scott JA writing for the majority of the Court said:

“[21] A formula for determining negligence which has been quoted with approval and applied by this Court time without measure is that enunciated by Holmes JA in *Kruger v Coetzee* 1966 (2) SA 428 (A) at 430E-F. It reads:

‘For the purposes of liability *culpa* arises if –

- (a) a *diligent 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 against such occurrence; and
- (b) the defendant failed to take such steps.

However, in *Mukheiber v Raath and Another* 1993 (3) SA 1065 (SCA) the following was said at 1077E-F:

‘The test for *culpa* can, in light of the development of our law since *Kruger v Coetzee* 1966 (2) SA 428 (A), be stated as follows (see Boberg Law of Delict at 390):

For the purpose of liability *culpa* arises if –

- (a) a reasonable person in the position of the defendant –
  - (i) would have foreseen harm of the general kind that actually occurred;
  - (ii) would have foreseen the general kind of causal sequence by which that harm occurred;

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<sup>2</sup> 2000 (1) SA 827 (SCA), at 838I – 839C



(iii) would have taken steps to guard against it, and

(b) the defendant failed to take those steps.”

[22] Considering the above authorities and the circumstances of this case, four main issues need to be considered:

1. Did the incident occur? If so,
2. Was the door of the compartment open while the train was moving? If so,
3. Was the train driver aware of this fact? If so,
4. Did he take reasonable precautions to avert harm to the train passengers?

[23] The Court is faced with two mutually destructive versions. In *Stellenbosch Farmers' Winery Group Ltd and Another v Martell & Cie SA and Others*<sup>3</sup> the Court had the following to say regarding the method to be employed in resolving factual disputes:

“The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the Court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness's candour and demeanour in the witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extracurial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. As to (b),

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<sup>3</sup> 2003 (1) SA 11 (SCA), at 14I-E.

a witness's reliability will depend, apart from the factors mentioned under (a)(ii), (iv) and (v) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed issues. In the light of its assessment of (a), (b) and (c) the Court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. The hard case, which will doubtless be the rare one, occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors are equipoised probabilities prevail."

#### Assessment of the evidence

[24] Sibanyoni was a satisfactory witness. His responses, candour and demeanour on the witness stand demonstrated that he was truthful, credible and reliable. His valid train ticket confirms his evidence that he was on the train on 12 June 2015. He testified that the train he was travelling in was full, its doors were open, and when it approached New Canada station, people started pushing and shoving to get to the doors. In that process, he was pushed off the train, fell on the platform and sustained injuries.

[25] He was able to give a description of New Canada station, and he could recall that he fell on platform 3. Phillip corroborated his evidence. Tshepo, who did not travel with him by train, confirmed that he found him lying on the platform covered in blood. The hospital file with records of admission to Baragwanath Hospital on 12 June 2015 is also not disputed. The only reasonable inference to be drawn is that he sustained injuries at the train station when he was pushed from a moving train with open doors.

[26] Phillip and Tshepo were also reliable and credible witnesses. The evidence that Phillip and Jacob called Tshepo for assistance and took him in Tshepo's car from New Canada station to Baragwanath Hospital is not disputed.

[27] The defendant sought to dispute the hospital records. To the extent that the parties agreed at pre-trial that the hospital records were what they purported to be, the Court thus accepts them. The issue is that the contents are hearsay, as the author of the records was not called to testify to them. Tshepo confirmed that he was not the author of the hospital records but only furnished the information to the hospital official, as it was conveyed to him by Phillip. Of importance here is that Sibanyoni did not rely solely on the hospital records to sustain the evidence that he was injured on the day in question. He testified and called two witnesses in support of his case.

[28] Mayihlole conceded that New Canada station had eight platforms and during rush hours, she could not have sight of all platforms at the same time, that incidents have previously happened where people fell out of trains because of people pushing and shoving in a rush to get out of the train, she did not have a pocketbook while on duty on 12 June 2015. Her insistence that the incident did not happen simply because she did not see it is not probable, given the number of platforms she had to monitor simultaneously during rush hour.

[29] Bezuidenhout was a reliable and credible witness. However, his evidence strengthened Sibanyoni's case. He conceded that New Canada was a busy station and that only two security guards were on duty on the day in question. Furthermore, they rely on the Occurrence Book, in which the security guards record daily occurrences. PRASA conducts truthfulness tests on the security staff because of trust issues. It happens that a security guard is untruthful and does not report an incident, resulting in there being no record in the Occurrence Book. For the investigation of the current matter, he only had the summons and was unaware that there were hospital records. He did not find records of the incident and could not comment on why the Occurrence and Pocket Books were not placed before the Court.

[30] Considering all the evidence, this Court has no basis to reject Sibanyoni's version, as it is more credible and probable. He was travelling in an overloaded train with open doors, was pushed by commuters and fell on the platform, resulting in his injuries. PRASA, its employees and agents knew

or ought to have known about the trains moving with open doors and overloaded. Further, such circumstances exposed commuters to the danger of being pushed outside the trains and sustaining injuries. The reasonable employees and agents of PRASA would have foreseen the possibility of such causing harm, but they failed to take measures to prevent it.

[31] PRASA led no evidence to show that Sibanyoni failed to take precautions for his safety. Even if this Court were to accept that he did not take precautions, PRASA would still not be absolved from its legal duties to safeguard its passengers.

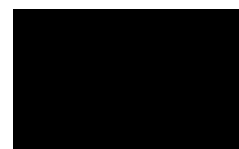
### Conclusion

[32] In my view, PRASA failed to adduce sufficient evidence to rebut Sibanyoni's *prima facie* case of negligence. In the circumstances, Sibanyoni's fall was occasioned by the negligence of the PRASA's officials and agents, and he is entitled to be fully compensated for such damages as he may prove in the future. PRASA is liable for the costs of the suit.

[33] Accordingly, the following order is made:

### Order

1. The defendant is liable to pay the plaintiff 100% of such damages as he may establish in due course arising out of his fall at Canada train station on 12 June 2015.
2. The defendant shall pay the plaintiff's costs of the suit.



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D. Mahosi J  
Acting Judge of the High Court

Delivered: This judgment was handed down electronically by circulation to the parties' representatives through email. The date for hand-down is deemed to be 04 November 2024.

Appearances

For the applicant: Advocate P. A Venter

Instructed by: VZLR Attorneys

For the respondent: Advocate B. Lukhele

Instructed by: Ledwaba Mazwai Attorneys