



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

(1) Reportable: No
(2) Of interest to other judges: No
(3) Revised: Yes

Case No: 72739/17

	22 January 2025
.....	
Signature	Date

In the matter between:

MPHO RATHIHAYA

Plaintiff

And

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Defendant

JUDGMENT

LESO A.J

INTRODUCTION

1. The plaintiff claims damages in the amount of R1,550.000.00 against Passenger Rail Agency of South Africa (PRASA) for the injuries he sustained as a result of an incident that took place on 29 August 2015 when he was a passenger in a Metrorail train from Bosman Station to Saulsville station in Gauteng Province.
2. The plaintiff was injured after being pushed from the train and claims that the defendant was negligent because the train doors

3. were not closed while the train was in motion or transit.

BACKGROUND

4. The matter was heard on 5 and 6 August 2024 after the parties agreed that the issue of quantum should be postponed *sine die*.
5. The defendant is the Passenger Rail Agency of South Africa, a state-owned enterprise responsible for providing metro rail services and long-distance rail across South Africa. The plaintiff was a fare-paying passenger or commuter in the Metrorail train.
6. The plaintiff proposed that the defendant should be held 100% liable to compensate him for such damages that he may prove, or be agreed upon between the parties because the members of the defendant were negligent in one or more or all of the following conducts:
 - 6.1 by failing to ensure that the train doors were closed and remained closed when the train was in transit.
 - 6.2 The failure to provide sufficient security officers to control the influx of commuters onto the train.
7. In the particulars of the claim the plaintiff averred that the accident was caused by the wrongful and negligent conduct of the defendant and its employees, acting within the course and scope of employment, in breach of their legal duty towards the plaintiff in one or more of the following respect:
 - 7.1 defendant failed to close the doors of the train whilst the train was in motion;
 - 7.2 defendant failed to implement safety and/or security measures to ensure that the doors of the train closed whilst the train was in transit;

- 7.3 The defendant failed to take steps to prevent the incident when by the exercise of reasonable care, they could and should have done so;
- 7.4 The defendant failed to take steps to prevent the incident when by exercise of reasonable care, it could and should have done so.
8. The plaintiff further pleaded that a reasonable person in the position of the defendant should have foreseen the reasonable possibility that failure to take steps to guard against the occurrence of an accident could cause members of the public and the plaintiff in particular, to sustain serious bodily injuries causing such member of the public and the plaintiff to suffer both patrimonial and non- patrimonial loss.
9. The defendant defended the action and denied liability on the basis that the accident was caused as a result of the sole negligence of the plaintiff in one or more of the following:
- 9.1 He voluntarily boarded an overcrowded train where there was no space;
- 9.2 He failed to take any or adequate steps to prevent the accident when he could and should have exercised reasonable care;
- 9.3 He stood at the open door of a moving train which posed danger to himself at that moment.
10. The defendant pleaded in the alternative that should the court find that the defendant was negligent, such negligence did not contribute to the plaintiff's being pushed out of the train and in the event the court finds that the court finds that such negligence contributed to the plaintiff being pushed out of the train, the plaintiff was also guilty of contributory negligence and the damages suffered by the plaintiff should be reduced proportionate to the degree of his negligence.

BRIEF SUMMARY OF FACTS

Plaintiff's case

11. The plaintiff testified that he was with his friend by the name of Tumisho Ratshidi when he boarded the train from Bosman Station to Saulsville Station between 14:00 and 16:00. After boarding the train he realized there was no vacant seat for him to occupy so he stood on the aisle holding a steel bar and gradually moved back towards the opposite door while the train was moving. The doors of the carriage in which he was traveling did not close and continued to stay open throughout the journey.
12. The plaintiff testified that the train made stops at four or five stations between Pretoria (Bosman) station and Kalafong station. Each time the train stopped at a platform, passengers pushed him toward the opposite door. Because all the seats in the coach were already taken, he was forced to hang onto the straps attached to the middle steel bar. As the train approached Kalafong station with its doors still open, a hawker approached the door next to the plaintiff and pushed him out of the train. As a result, the plaintiff's feet were flung into the air, and he fell onto the concrete platform below, with his head striking the ground due to the force of the moving train. The accident caused a head injury and scarring on the lower part of his back. A security officer at the platform called an ambulance after being unable to stop the bleeding from the plaintiff's back.
13. The plaintiff's uncle, Reuben Rathihaya's testimony does add value to the plaintiff's case because he did not witness the accident.

Defendant's case

14. Gezani Justice Manganye testified that he started working for the defendant in December 2013 and his duties among others included observing the safety of people embarking and disembarking the train when the train is stationed at the platforms and assisting the train driver by opening and closing the doors when the train stops at the station. He alerts the driver not to depart by ringing three (3) bells. If he notices anything that is not in order including the open doors.

15. The witness testified that on the day in question, the train approached the station and once it stopped he opened the doors. As he was observing the platform he noticed the plaintiff who at the time was wearing a white t-shirt, was lying on the floor. He then rang 3 bells alerting the driver of the train not to depart. He approached the plaintiff to find out what was happening and the plaintiff just said sorry. He left the plaintiff to go and find a friend who was traveling with the plaintiff. He further testified that he informed the security guards at the station and handed the plaintiff to them, then he got into the train and departed.

ISSUES FOR DETERMINATION

16. The court will determine whether the plaintiff was ejected from the train due to the defendant's failure to close the doors or if the plaintiff's actions (surfing the train) were the primary cause of the injury.

ANALYSIS OF EVIDENCE

17. The plaintiff's claim for damages can only succeed if he proves that his injury directly resulted from the defendant's actions or inactions, as the burden of proof rests with him. This principle is grounded in the legal maxim *he who alleges must prove*.
18. Our law of delict requires the plaintiff to establish four key elements to succeed in a claim for damages: wrongful conduct (negligence), fault, causation, and damages. In assessing negligence, it is helpful to first recognize the defendant's duty to ensure safe and secure passenger rail services, which includes the responsibility to prevent accidents and harm to passengers through the exercise of reasonable care. In this case, the plaintiff must demonstrate that the defendant failed in its legal duty to provide such care. Specifically, the plaintiff contends that the defendant's failure to close the train doors created a hazardous situation that ultimately led to his injury. Conversely, the defendant argues that the plaintiff's injuries were the result of his reckless behaviour.

19. The plaintiff must prove that he was pushed out of the train because the doors were not closed and demonstrate that this failure directly led to the incident. The key question is whether the accident would have occurred if the train had not been moving with its doors open. This is typically assessed using the “but-for” test: but for the defendant’s failure to close the door while the train was moving, would the harm have occurred? Additionally, the plaintiff must show that the harm resulting from this failure was a reasonably foreseeable consequence of the defendant’s conduct.
20. The court has carefully considered the plaintiff's testimony that the train was full when he boarded at Bosman station and he stood next to the open door because the door of the carriage in which he commuted was not closed. He was standing close to the open door throughout the journey until a hawker suddenly emerged and pushed the plaintiff from a moving train. The defendant pleaded that the plaintiff was engaging in dangerous behaviour by attempting to "surf" the train by boarding an already full train and standing on an open door while it was moving. This evidence was not challenged by the defendant save to state that the defence pleaded that the plaintiff was harmed because he was surfing by standing next to the open door. I will deal with this allegation or defence that the plaintiff was surfing the train later.
21. I will first deal with the plaintiff's account of events on the train and at the platform after he was injured. The plaintiff's evidence was not impressive because he exaggerated the circumstances surrounding the incident by suggesting that the open doors of the moving train solely caused the accident. This claim is speculative and inconsistent with the factual evidence available. There is no objective basis for this claim, and it appears to be an attempt to amplify the perceived danger of the situation
22. The plaintiff was the only witness who testified about the events on the train and his evidence was not satisfactory. He mentioned that he was with his friend when he boarded the train but he made no mention thereafter until the court enquired about this friend that the plaintiff's counsel mentioned in court that the plaintiff's friend could not be traced. The plaintiff's testimony was that he went to the toilet to wash the blood coming from the back of his head, and came back to lay in the same spot

where he fell is rather peculiar. This was not disputed by the defendant, in fact, the defendant witness confirmed the plaintiff's testimony that he was accompanied by a friend who he interviewed after the accident. The plaintiff's version that he stood next to the open door from the first platform to the fifth platform where he had an accident because the train was full because people were only embarking on the train is not only improbable but supports the defendant's claim that the plaintiff's action contributed to the accident.

23. The evidence of Gezani Justice Manganye who testified on behalf of the defendant did not assist the defendant's case because he could not see what was happening in the other coaches or whether the doors were closed or not as the only metro rail guard on the train was at the tail of the train and his view was obscured. The defence version that on the day in question, the train was not full because it was the weekend and he closed the doors contradicts the defendant's plea wherein it was conceded that the train was full and the door was open when the train was in motion.
24. From the pleadings, the plaintiff based her cause of action on the allegation that the employees of the defendant breached their duty of care to him as a result he suffered harm. The plaintiff has set out the legal duty impressed on the defendant and how the defendant breached its legal duty to care as discussed in paragraph 5 of this judgment. Consequently, the plaintiff has detailed the grounds of negligence in line with the court's finding in finding in *SA Fish Oil Producers' Association (Pty)Ltd v Shipwrights & Engineers Holdings Ltd*¹ the court announced that the particular grounds of negligence must be detailed and in *Beurain h/a Toptrans Transport v Regering van die RSA*² the plaintiff is was required to set out the facts that could or should have been foreseen by the defendant.
25. The plaintiff's argument that the defendant has a duty to provide transport that is safe and secure for commuters and a legal duty to prevent harm to commuters was confirmed in *Shabalala v Metro Rail*³ in para [7]) where it was said that PRASA is duty-bound to take all such steps as are reasonably necessary to put proper and adequate safety and security measures in place PRASA is duty-bound to take all

¹ See: *SA Fish Oil Producers' Association (Pty)Ltd v Shipwrights & Engineers Holdings Ltd* 1958 (1) SA 687.

² *Beurain h/a Toptrans Transport v Regering van die RSA* 2001 (4) SA 921 (O).

³ *Shabalala v Metro Rail* [2007] ZASCA 157.

such steps as are reasonably necessary to put proper and adequate safety and security measures in place, these would include, but not limited to, steps to properly control access to and egress from all trains and facilities used by rail commuters wherever PRASA provides such services. This requires PRASA to take reasonable steps to ensure the safe passage of commuters (including the plaintiff) and any failure to take such steps may render it liable in delict.

26. The court must accept that the plaintiff has discharged his onus on the balance of probabilities that the Defendant was negligent, and further that there is a causal link between the plaintiff's injuries and the Defendant's despite the above-mentioned destructive evidence of the plaintiff. The concession by the defendant that the train doors were open while the train was in motion plays a crucial role in establishing a breach of duty.
27. The defendant's admission acknowledges that the train was being operated in a manner that posed a clear safety risk to passengers. This admission is sufficient to support the argument that the defendant breached the legal duty of care, which requires train operators to ensure the safety of passengers, particularly by ensuring that train doors are secure when the train is in motion. In *National Employers' General v Jagers*⁴ the court held that '*where the onus rests on the plaintiff as in the present case and where there are two mutually destructive stories, he can only succeed if he satisfied the Court on a preponderance of probabilities that his version is true and accurate and therefore acceptable and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected.*
28. Moreover, the failure to secure the doors of a moving train is a clear deviation from the standard of care expected from a train operator. Operating a train with open doors, especially when the train is already full of passengers, is not only reckless but also grossly unreasonable. This situation creates an environment where harm is not just likely but almost inevitable, as evidenced by the plaintiff's injury. The failure to close the doors of the train represents a known safety hazard. This failure disregards the fundamental responsibility of ensuring passenger safety and, by

⁴ See *National Employers' General v Jagers* 1984 (4) SA 437 (E) at 440D. See also *Stellenbosch Farmers' Winery Group Ltd v Martell et cie* 2003 (1) SA 1 (SCA) para 5 and *Dreyer v AXZS Industries (Pty) Ltd* 2006 (5) SA 548 (SCA) at 558E-G.

extension, the human dignity of those passengers. Such conduct cannot be condoned, as it demonstrates a blatant disregard for both human life and safety.

29. The plaintiff also contributed to the accident by surfing the train however the plaintiff's actions do not absolve the defendant of responsibility, as the critical issue is the defendant's failure to operate the train safely, which directly contributed to the plaintiff's harm. The plaintiff's recount of how and where he stood on the train throughout the journey supports the defendant's version that the accident happened because the plaintiff was engaging in a dangerous maneuver.
30. The train is made of several carriages and a passenger can maneuver from one carriage to the other even when the train is moving. The plaintiff boarded a train that was full and stood next to the open door the whole trip when he had an opportunity to move to the other couches or look for a safe space to occupy. Despite the realization that the train was "full" the plaintiff assumed risk by remaining standing in the full carriage with the open doors. The fact that the plaintiff was surfing the train is however an intervening factor that does not absolve the defendant from responsibility or legal duty to act accordingly.
29. In conclusion, the defendant's failure to secure the train doors is a breach of the duty of care owed to the plaintiff and this breach directly caused the plaintiff's injury. The defendant was negligent and such negligence did contribute to the plaintiff's being pushed out of the train. The plaintiff is also guilty of contributory negligence and the damages suffered by the plaintiff should be reduced proportionate to the degree of his negligence.
30. There are no fast and hard rules for determining or calculating contributory negligence in our system. The apportionment of liability between the parties based on their respective levels of fault. Consequently, the plaintiff is found to be 40% at fault. The plaintiff would recover 60% of the total damages.

COSTS

30. The only submission made in respect of the costs by the plaintiff was that costs should not follow the results and the Plaintiff's costs of suit, including the full costs

of counsel, no further submission was made as to why the court should award costs at this stage.

THEREFORE, I MAKE THE ORDER AS FOLLOWS:

ORDER

1. The defendant is 60% liable for the plaintiff's damages that may proven, or be agreed upon between the parties.
2. Dispute of quantum is postponed *sine die*.
3. Costs are costs in the course.



J.T Leso
Acting judge of the High Court of South Africa
Gauteng Division, Pretoria

Date of Hearing: 5 and 6 August 2024

Date of Judgment: 22 January 2025

APPEARANCES:

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