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

CASE NO: 61254/2020

DATE: 30-09-2024

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED.

DATE: 2025.02.25

SIGNATURE:

In the matter between

DANIEL PITSO SEFAKO

Plaintiff

and

PRASA

Defendant

JUDGMENT

MABUSE, J:

[1] This is a claim for payment of money. This claim is resisted by the Defendant. This claim is brought by the plaintiff in his personal capacity.

[2] The parties.

[2.1] The Plaintiff, Daniel Pitso Sefako, is an adult male who resides at house [...], M[...] Street, Atteridgeville in Pretoria.

[2.2] The Defendant, the Passenger Rail Agency of South Africa (PRASA), is a company with limited liability registered as such in terms of the Company Statutes of this country with its registered offices situated at 1040 Burnett Street, Hatfield, Pretoria, Gauteng Province.

[2.3] In terms of section 23(11) of the Legal Succession to the South Africa Transport Service Act No 9 of 1989, the main object and business of the Defendant is to ensure that rail commuter services are provided within, to and from Republic of South Africa, in the public interest.

[3] The Particulars of claim are set out in the summons as follow. At all material times hereto and in particular on 7 August 2019, the Defendant was the lawful owner of certain rail commuter assets or trains as envisaged in section 25 of the Act 19 of 1989(the Act), and was in particular the legal owner of the train that operated between Saulsville and Schutte railway stations.

[4] According to the Plaintiff, at all material times and in particular on 7 August 2019, the Defendant:

[4.1] was trading as Metro Rail

[4.2] operated or continued to operate railway commuter services as move fully set out in terms of the Act.

[4.3] On that day conducted its affairs through the actions or omission of its employees in the course and scope or their employment with the Defendant;

[4.4] operated and provided rail commuter services to members of the public between Atteridgville and Schutte stations using trains consisting of locomotives

[4.5] In so operating and providing the rail commuter services aforementioned, controlled and administered all passenger or commuting by members of the public in respect of the said trains.

[5] Initially the Defendant admitted this allegation.

[6] The Defendant, however denies the following allegations.

[6.1] The Plaintiff and the Defendant contemplated that such rail commuter services would be used by members of the public, including the plaintiff, to travel along the routes designed by the Defendant.

[6.2] In providing and operating the rail commuter service aforementioned, had a legal duty, alternatively a duty of care to ensure the safety of the public, including the plaintiff making use of such services as passengers or otherwise,

[6.3] The Defendant denied all these allegations and called upon the Plaintiff to prove them.

[7] The Plaintiff continued, in his particular of claim, as follow:

[7.1] on 7 August 2019, the Plaintiff waited to board a commuter train which left Atteridgeville station and travelled to Schutte station,

[7.2] The Plaintiff boarded the train at Atteridgeville rail station when it was stationary,

[7.3] The train left Atteredgeville rail station. As the train arrived at Schutte station the doors opened and as the plaintiff was busy disembarking from the train, the train took off while the Plaintiff was busy disembarking and thereby causing the Plaintiff to fall down onto the platform,

[7.4] At the time of the incident, the Plaintiff was in possession of a valid train ticket with number 61256.

[8] The allegations are denied by the Defendant. The Defendant contends in its plea that events set out by the Plaintiff in his particulars of claim, especially in paragraph [6] of the particulars of claim, did not occur and the Defendant breached its obligation as set out in paragraph [5] above, which breach amounted to negligent conduct on his part in one or more of the following respects'.

[8.1] The Defendant failed to ensure the safety of the members of the public in general, and the plaintiff, in particular, on the coach compartment of the train in which the plaintiff travelled.

[8.2] Defendant failed to make any or adequate steps to avoid the incident in which the Plaintiff was injured whereby the exercise of reasonable care, it could and it should have done,

[8.3] The Defendant failed to take any adequate precaution to prevent the Plaintiff from being injured. The Defendant failed to employ adequate number of employees to guarantee the safety of passengers in general, and the plaintiff in particular on the coach compartment in which the plaintiff travelled.

[8.4] The Defendant failed to employ employees alternatively, adequate numbers of employees to prevent passengers in general and the Plaintiff in particular, from being injured in the manner he was, or sustaining injuries and/or bodily harm.

[8.5] The Defendant allowed a train to be set in motion without ensuring that the doors of the train and coach compartment in which the Plaintiff was travelling, were closed before the train was set in motion.

[8.6] The Defendant allowed the train to move with open doors and failed to take any alternatively adequate steps to prevent the train from moving with open doors.

[8.7] The Defendant failed to keep the coach safe for use by the public in general and the Plaintiff in particular,

[8.8] The Defendant failed to ensure all and /or certain coach compartment were not overcrowded,

[8.9] The Defendant neglected to employ security staff, alternatively adequate security staff on the platform and/or the coach in which the Plaintiff was travelling, to ensure the safety of the public in general and the Plaintiff in particular.

[9] The Defendant disputes all these allegations that it breached its obligations as set out in the particulars of claim. It required the Plaintiff to prove them and further pleaded contributory negligence on the part of the Plaintiff.

[10] In Paragraph [8] the Plaintiff avers that as a consequence of the said incident, he sustained certain bodily injuries, namely, he:

[10.1] Experienced pain and suffering and will in future experience such pain and suffering,

[10.2] He suffered loss of amenities of life, and will in future suffer such amenities of life,

[10.3] He will in future incur hospital and medical expenses,

[10.4] He was disfigured and disable,

[10.5] He suffered emotional stress and shock and he will suffer lower earnings and earnings capacity.

[11] To these allegations the Defendant pleaded that it had no knowledge of those allegations and required proof thereof.

[12] At the inception of the trial, the Court was informed that the only issue before the Court were the merits. In terms of Rule 33 (4) of the Uniform Rules of Court, the merits were separated from the quantum and the quantum related issues were postponed *sine die*.

[13] The second issue that this Court was called upon to determine was whether the incident that forms the basis of the Plaintiff's claim. Ever took place. It would be recalled that the plaintiff set out in paragraph [6] of his particulars of claim, how the incident took place. It will be recalled furthermore that in paragraph [9] of his plea the Defendant pleaded that the incident did not take place.

[14] The further issue that this Court is required to decide was as pleaded by the Defendant, is whether there was any contributory negligence on the part of the Plaintiff.

[15] In support of the allegations contained in the particulars of claim, Mr van Ryneveld, who appeared for the Plaintiff called two witnesses. The first of these witnesses was Daniel Pitso Sefako, the Plaintiff in this matter, and the second was Mr Precious Monwabisi Gcanga. I will call him Xanxa for a lack of a proper pronunciation.

[16] Mr Sefako the Plaintiff, testified that on 7 August 2019 he was working at Tshwane Mail Pretoria. At the time of the accident, he was working nightshift. He boarded a train on that particular day on his way to work and he was supposed to go off at Barracks railway station.

[17] On that particular day the train dropped him at Schutte railway station because there was an incident that had taken place in the normal route of the train, as a result the trains left their normal route. He had a train ticket, and the train ticket number 61256 It was shown to this Court on the day he testified. That ticket was a monthly ticket.

[18] He was shown some pictures and he identified those pictures that they consisted of Schutte train station and these pictures were referred to as exhibit "C" and furthermore, he showed a platform of railway station.

[19] The doors of the train, as he continued to testify, were not working properly. Sometimes the doors would close and at times would not. The people at the back would close the doors.

[20] As the train was moving towards Schutte railway station, he was standing on the side of the door, holding onto the handling or overhead straps, at Schutte railway station the door open. They waited for the people to get off the train. As he was about to disembark, the train pulled off. The doors were open when it was still in the presence of pulling away, he fell. He saw himself on the ground. There were no securities at the station.

[21] As he was on the ground, somebody came to assist him. He walked with one of the people who came to assist him and the other one was an acquaintance of his. He tried to stand up, he could not for it was difficult. Tebogo came to pick him up. He was nearby. He called an ambulance, and documents relating to an ambulance were shown to him. The ambulance report was also handed in as exhibit "E".

[22] And the second witness, as I have indicated, who testified, was a Mr Precious Monwabisi Xanxa. In brief he said he remembered the incident of 7 August 2019 at Schutte railway station. He was going to Atteridgeville and he was still waiting for his train. The time was about 17:00. There were many people on the platform. The train arrived at the station. He does not remember what time it was but he was at a distance of about two metres. After it had arrived at the platform it did not stop there for a long time. It was a short time, about two minutes. He knows the Plaintiff fell. He does not know what caused the plaintiff to fall on the platform.

[23] The train never stopped once it started moving. There were many people. The Plaintiff was in the middle of the people who were disembarking the train. He was the only one who fell.

[24] The witness testified that Schutte station is small, and before the train moved away, there was no signal by any of the train officials and that concluded the evidence of the witness.

[25] Mr Lukele, who appeared for the Defendant, applied for absolution from the instance at this stage and the Court refused it. He called two witnesses, Mr Joyce Lebo Kheswa, the first witness that he called and the witness is a Metro train guard and his duty is to help the driver with preparations.

[26] He testified but his evidence does not relate to the incident at all; it does not help the Court.

[27] The second witness was Miss Lulama, I think for purposes of the record I will repeat the whole evidence. She is the train driver which has been working there since 18 September 2000. On that particular day, she was the driver of the train that travelled between Saulsville and Pretoria and Pretoria and Mamelodi and Pretoria and Johannesburg. She is now based at Wolverton somewhere in Pretoria North.

[28] In operating the train as the driver, she does so with Metro Rail Train Guard, that is, the Defendant's first witness. The Metro Rail guard will open the doors. The train will be stationary. Once the people have gotten off or on the train, the Metro guard gives a signal. The Metro guard will then give a signal to the commuters that the train is about to depart.

[29] After that she will give her a signal that the train may leave the platform. She gives her that signal by way of a button. She presses a button. That is not the only signal that she gives. If she wants her to stop the train, she presses the signal three times. This happens when the Metro Guard sees a person who is rushing to board that train.

[30] The train guard will always give her signal when the train has to stop. She was on duty on the date in question, he was the train driver. She was shown on page 9 and she confirmed that page represented a daily journal. This journal shows that

she reported for duty at about 5 o'clock in the morning. She drove the train. It was one train but different numbers. There are other trains on the line.

[31] On that particular day she did not see any incident, she worked on that day with the first witness Joyce Kheswa. She does not recall who took over from her. It was Masheleng Mulindane, and she says she knows nothing about the incident of 7 August 2019. If it happened, it did not do so on that train or at the time when she was the driver of the train.

[32] Now, in terms of the law the duty is on the Plaintiff to prove what he states in the particulars of claim. The duty to do so in this case is made more easier by the fact that the Defendant has denied that the incident took place as that he claimed. The Plaintiff claimed that the incident took place in accordance with the particulars of claim taken place and the Plaintiff was called upon to prove it.

[33] All that I can say at this stage is that the evidence of the Plaintiff has not been disputed. Apart from the Plaintiff, the Defendant pleaded that the incident did not take place, the Plaintiff has told the Court how he got injured, and how the incident took place, how he got injured, and how he was taken to hospital by an ambulance.

[34] His evidence that this incident took place is supported by the evidence of his witness, the second witness, who testified in this matter, who said he was at the railway station. He saw the train come. He was there when it stopped. He was there when people came out of the train and he was there and saw the Plaintiff when he fell on the platform. He does not know what caused the Plaintiff to fall but the fact is the Plaintiff fell on the platform.

[35] This evidence cannot be disputed. There is no other version that has been placed before the Court other than the plea that the incident did not take place.

[36] In his argument, and in his desire to obtain a dismissal of the plaintiff's claim, Mr Lukhele referred the Court to the judgment of *Howard and Dekker Witkoppen Agencies and Fourways Estate (Pty) Limited v De Sousa 1971 (3) SA 937 (T)*. This was in connection with the statement made by one Tebogo Thobejane who had

claimed that after the incident he had spoken to the plaintiff and the plaintiff had given him the different direction. There was a dispute as to whether the statement should be admitted. In his view the statement had to be admitted in terms of this judgment. The judgment read as follows:

"The law in relation to the proof of private documents is that the document must be identified by a witness who is either (i) the writer or signatory thereof, or (ii) the attesting witness, or (iii) the person in whose lawful custody the document is, or (iv) the person who found it in possession of the opposite party, or (v) a handwriting expert, unless the document is one which proves itself, that is to say unless it:

- (1) is produced under a discovery order, or
- (2) may be judicially noticed by the Court, or
- (3) is one which may be handed in from the Bar, or
- (4) is produced under a subpoena *duces tecum*, or
- (5) is an affidavit in interlocutory proceedings, or
- (6) is admitted by the opposite party."

Mr Lukhele hang his case on the statement which was produced under a discovery order. The problem was the word order, the presence of the word "order" in number 1.

[37] His argument, that is Mr Lukhele's, was that the statement of Tebogo Thobejane was discovered by the plaintiff during the discovery process and as such the principle established in the said case dictates what the statement can be allowed by the Court as it was produced under discovery. In this statement that he made in paragraph [50] of his heads of argument, he left out the word discovery.

[38] A notice requiring a party to make discovery may not be given until after *litis contestatio* or after the close of the proceedings. Such a request, which request a party to disclose is made in terms of Rule 35(2) of the Uniform Rules of Court.

[39] A request which requires a party to disclose is made in terms of Rule 35(2) by Rules of Court, a party who discovers following such a request, does not, in terms of the said rules and in terms of the - discover on the basis of court order. At this stage there is no court order as required by the requirements under discussion, to produce a document. But Rule 35(11) makes provision for a court order. follows:

Rule 35(11) of the Rules of Court provides as

"The court may, during the course of any proceedings, order the production by any party thereto under oath of such documents or tape recordings in his power or control relating to any matter in question in such proceedings as the court may think meet, and the court may deal with such documents or tape recordings when produced, as it thinks meet."

In my view the word "order" as set out in that judgment of Da Sousa comes from Rule 35(1) because it is in terms of Rule 35(1) that a party may be required to produce the documents or discovered documents and when that is done it is in terms of number 1, it is produced under a discovery order.

[40] In this case, as I already have pointed out, the statement of Thobejane was not discovered under the circumstances envisaged in that rule. Therefore, the statement of Thobejane could not be admitted and it served no useful purpose in pursuance of the defendant's case.

[41] My view is therefore that the evidence of the plaintiff cannot be contradicted. After he had dealt with that case of *Discovery affidavit Sousa*, he turned his attention to what you call the evidence of the plaintiff's only independent witness, which in view directly contradicted the plaintiff's version. He stated that in this case ...[indistinct] which is highly destructive of the plaintiff's version.

[42] The plaintiff's version was that he fell when he tried to disembark; that he was the last person who disembarked from the train and that the other commuters disembarked normally whereas independent witness, that is Mr Xanxa in other words, testified that in fact the plaintiff came out of in the midst of the group of people who were pushing and pulling and that is how he fell. Despite the fact that he could not explain why it took two minutes for his group to leave the train from the moment that he saw them, it is irrelevant how long it took him to see these people. The fact is that his evidence is not denied.

[43] Now according to Mr van Ryneveld's heads of argument, the claimant indicates that once the train arrived at Schutte station, the plaintiff waited for the other passengers before him to disembark. As he was still in the process of disembarking and without my warning, the train pulled away from the Schutte station with the doors open. This evidence is also confirmed or corroborated by the evidence of the plaintiff's witness.

[44] Before the train started moving, the plaintiff fell on the ground. There were not security officers employed by the defendant at that time at the station. The plaintiff was assisted by his witness and Tebogo.

[45] Mr Gcangu testified that the platform at Schutte rail station was quite busy. He was about two metres away from the train and about two to three metres away from the train doors. He himself had intended to board a train to Atteridgeville. He did not recall whether the doors of the train opened automatically or whether they were opened by the passengers or whether they were opened when the train arrived at the Schutte rail station. He testified that the train did not stop for a very long time and he estimated the time of two minutes before the train left the platform.

[46] He testified further that he saw the plaintiff and that he could see the plaintiff fall out of the train after departure. Although he could not say for certain why the plaintiff fell, he testified that the train was moving and that the train doors were still open when the plaintiff fell. This is how he fell of the train.

[47] It must be remembered that the defendant's plea was, as contained in particular 6 of its plea, that the incident set out by the plaintiff in his particulars of claim and also confirmed or corroborated by the evidence of his witness, did not take place.

[48] Mr van Ryneveld argued in his heads of argument that it was not put to the plaintiff that the accident did not take place. This is correct. That the plaintiff fell because he was pulled by another passenger, that was not put to the plaintiff's delay in exiting the train within two minutes amounted to contributory negligence. That the train did not move when the doors were opened at Schutte station, that the train doors were closed before the train started to depart Schutte station.

[49] The ambulance records were wrong. There was an issue about these ambulance records. Mr Lukhele was unhappy about the hospital records. He required someone who had completed the records, to come and testify and the plaintiff was unable to produce any witness to confirm that indeed he was picked up from the railway station by an ambulance.

[50] Now this evidence was not required because the plaintiff himself testified that he was taken from the railway station by an ambulance. It was not his duty to make sure that someone who picked him up from the railway station completed his record.

[51] While Mr Lukhele wanted, but did not want the hospital records to be handed in because the person who completed them was not available, on the contrary he wanted this Court to accept the evidence of the statement by Thobejane I find this very contrary to his intention.

[52] In conclusion I found that the plaintiff and his witness have set out the incident as it took place on the date in question; that their evidence cannot be contradicted, and I find that the defendant's witnesses were unable to shed any light on the incident as was testified by the plaintiff and his witness. Their evidence, while it is very valuable, it did not help the Court to determine as to whether this incident took place or did not take place.

[53] Based on the evidence of the plaintiff and his witness, the injury he sustained, the fact that he was fetched by an ambulance from the station as he testified, the absence of any evidence to contradict him, the Court finds that the incident did occur at Schutte railway station on the day mentioned in the particulars of claim, and that the said incident was caused by the negligence of the defendant's employees.

[54] Finally, not finally actually, there was an issue regarding the trains, whether he fell from one train or the other, the fact is he fell from a train and the number of the trains were not mentioned and the time also was not mentioned in the particulars of claim. Whether or not he fell from train 022 or 021, the fact is he fell from the train. He was seen by a witness falling from the train.

[55] I think the case that Mr Lukele referred to in this matter is the case of *Mashongwa v PRASA* [2015] ZACC 36 says much about the facts of this case. It is the only authority on the incidents that relate to the negligence of the defendant's own trains. It is the only authority that tells the defendant as to what he should do when he transports commuters on the railway line. It tells our courts what conduct of the defendant constitutes negligence, and in view of the fact that this is the only authority which deals with the subject matter, it serves no useful purpose to refer to any other authority.

[56] The case dealt with whether a transport utility like PRASA, ought to be held vicariously liable for damages that flow from a breach of public law of duty to provide safety and security measures for all its rail commuters. In paragraph 20 it states:

"Public carriers like PRASA have always been regarded as owing a legal duty to their passengers 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 carrier and passenger, usually, but not always, based on a contract. It also stems from its public law obligations. This merely strengthens the contention that a breach of those duties is wrongful in the delictual sense and could attract liability for damages."

Paragraph 21 it says:

"The criticism levelled at PRASA is that it omitted to do two things. First, to ensure that there were security guards on the train. Second, it permitted the train to travel between Walker Street and Rissik Street stations with the coach doors open. Whether a reasonable train operator would have foreseen the risk of harm to passengers arising from this, and taken steps to guard against that risk, are questions that fall to be answered in the enquiry into negligence. But in addressing wrongfulness the question is whether omissions of that type, in breach of PRASA's public law obligations, are to be treated as wrongful for the purposes not only of public law remedies, but also for the purpose of attracting delictual liability sounding in damages. For the reasons that follow, even if one treats both of those as an omission, it makes no difference to the analysis of wrongfulness."

[57] If you recall that in his particulars of claim the plaintiff set out the respect in which in his view, the defendant was negligent and it also set out the duties that the defendant had to comply with when he was transferring commuters.

I am satisfied that the plaintiff has made out a good case and that accordingly the judgment on the merits should be granted in favour of the plaintiff, with costs.

The Court makes the following order, judgment on the merits is granted in favour of the plaintiff, with costs.

MABUSE, J
JUDGE OF THE HIGH COURT

DATE: 2025.02.25