

REPUBLIC OF SOUTH AFRICA



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

CASE NUMBER: 46963/2011

DELETE WHICHEVER IS NOT APPLICABLE

1.REPORTABLE: NO

2.OF INTEREST TO OTHER JUDGES: NO

3.REVISED: NO

25 March 2025

Judge Dippenaar

In the matter between:

KHALIPHA BANJIWE ZIYANDA

PLAINTIFF

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA) DEFENDANT

JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be 10h00 on the 25th of MARCH 2025.

DIPPENAAR J:

[1] This is a trial action in which the plaintiff seeks damages as a result of injuries sustained by her on 13 May 2011 at Park Station in an incident involving one of the defendant's trains. At the commencement of the trial, an order was granted by agreement between the parties separating the issue of liability under r 33(4) and postponing the quantum *sine die*.

[2] Three witnesses testified. The plaintiff, Ms Banjiwe, Mr Phakamile Adolphes Madziba, an eye witness who was at the time employed by the defendant as a security officer at Park Station and Mr Khuzwayo, a protection officer in the employ of the defendant.

[3] In her particulars of clam, the plaintiff pleaded how the accident occurred as follows:

'On or about 13 May 2011, the plaintiff boarded one of Defendant's trains ("The Train") of which the train number is unknown to Plaintiff, at Oberholtzer station with a valid ticket en-route to the Johannesburg station. Due to lack of crowd control by the Defendant, other commuters pushed and trampled over the Plaintiff from behind and the train pulled and as result (sic) the Plaintiff sustained multiple injuries as indicated below'.

[4] The defendant on the other hand pleaded that the accident occurred as a result of the plaintiff's negligence in various respects. It was pleaded *inter alia* that the plaintiff attempted to board the train which was at the time already in motion with its doors closed

after all the pre-departure safety measures or warnings had been complied with and that the plaintiff interfered with the train doors when they were already released to close and had closed and was thus the sole cause of the accident. In the alternative, the defendant pleaded that there was contributory negligence on the part of the plaintiff in accordance with the Apportionment of Damages Act 34 of 1956.

[5] At the trial various facts were common cause. They are the following. The accident occurred at approximately 14h00 on 13 May 2011 at Park Station, platform 3 and 4, as a result of which the plaintiff sustained injuries to her right ankle and left leg. At the time, the plaintiff was in possession of a valid monthly train ticket.

[6] In evidence, the plaintiff's version as to how the accident occurred was somewhat different to the case pleaded. She testified that the accident occurred at Park station. That was common cause. Her version was that she boarded a stationary train with its doors open. She was walking and was not in a rush. When she arrived at the platform, the doors were open on both sides of the train. She entered the train but could not find a seat. She stood in the middle of the train next to the door from which she had just entered, facing the door. She was holding on to a balancing loop and was surrounded by commuters. She did not hear any warnings that the train was about to move. When the train started moving, people started rushing to enter the train. Some people entered the open door on the other side of the train behind her and pushed her, causing her to fall out of the train and land with the bottom part of her body between the railway tracks and the platform. At that time, the train was in motion with its doors open. She sustained injuries to her left leg and right ankle as a result. People started to shout for the train to stop and it stopped. She was assisted and ultimately taken by ambulance to the hospital.

[7] During cross examination she was emphatic that both doors on each side of the train were open and that there were platforms on each side of the train. She was further emphatic that she was walking to the train prior to the accident and was not rushing,

despite it being put to her that evidence would be led that she was doing so. Despite initially disputing that she was interviewed at the scene, she later conceded that her as her contact details were contained on the report provided by the protection officer, she was interviewed. She further tailored her evidence pertaining to the fact that she was surrounded by commuters in the train when confronted with the probability that other commuters would have been affected by the pushing she averred.

[8] The picture painted by the defendant's witnesses is very different. Mr Madziba testified that he was on duty at platform 3 and 4 on the day in question. He saw a lady, referring to the plaintiff, rushing down the stairs to the platform and to the train. He was some thirty paces away from her. She attempted to board the train, which had already begun moving. She missed the step and fell with her legs trapped between the train and the platform. People started screaming and the train guard was alerted to signal that the train be stopped. The train was stopped and the plaintiff moved to the side of the platform. He notified control and Mr Khuzwayo was called, who took over the scene. He explained to Mr Khyuzwayo what he had seen and was present when the plaintiff was carried via stretcher to the ambulance.

[9] In cross examination Mr Madziba explained that when the plaintiff approached the train, it was stationery with its doors open. The whistle had already been blown by the train guard to warn commuters that the train was about to start moving. The whistle is so loud that everyone on the platform would hear it. The train guard at the back of the train blows the whistle to indicate the train is about to move, indicating to commuters that they should not enter or exit the train as it was about to move. As the plaintiff put her foot on the door to enter, the train pulled off and the doors started to close. The lost her balance and fell.

[10] Mr Khuzwayo testified that he was called from the concourse to report to platform 3 and 4 as there was a commuter injured. He found the plaintiff on the side of the platform.

He asked Mr Madziba what happened, who explained he witnessed the accident and that plaintiff was attempting to board a moving train. She lost balance and fell. He asked plaintiff what happened and got her details she explained she was attempting to board a train which was in motion. He completed the liability form and called an ambulance after interviewing the plaintiff. Paramedics arrived and used a stretcher to take the plaintiff to an ambulance. In Mr Khuzwayo's statement he stated that the plaintiff reported that she was running for the train and as she put her foot inside the coach, the train started to move and she lost her balance and fell between the train and platform. The liability form also indicated that the plaintiff was attempting to board a moving train.

[11] He was emphatic that the plaintiff's version was not true that there were platforms on both sides of the train and that the doors on both sides of the train were open. Doors are only open on one side as on the other, there are railway tracks between the train and the next platform. Despite cross examination he maintained that he interviewed the plaintiff. That version was not disturbed. He completed the liability form and about a year later made a statement on 18 April 2012 when asked to do so by the investigating officers after the plaintiff had lodged a claim. He insisted that he saw Mr Madziba at work that day and got information regarding the incident from him. Mr Madziba's name was on the liability form and the occurrence book that recorded the incident on the day in question.

[12] The defendant called for an inspection *in loco* of where the accident occurred, which was conducted virtually with representatives of each of the parties present. A video was produced by agreement between the parties, which was introduced into evidence.¹ The contents of the video was common cause and illustrated that there were indeed no platforms on both sides of the train as testified to by the plaintiff. There was only a platform on one side of the train, with railway tracks on the other side of the train before the following platform. The video further contained a virtual tour of the station from the concourse, down the stairs onto the relevant platform. The real evidence materially

¹ As real evidence, Exhibit B.

corroborated the evidence given by Mr Khuzwayo and showed the plaintiff's version on this issue to be unreliable.

[13] The documentary evidence² also in material respects corroborated the evidence of the defendant's witnesses. The incident report prepared by Mr Khuzwayo, contained the statement: *'The victim alleges that she was running for the train and as she puts her foot on the coach floor the train pulls away and she fell.'*

[14] The test pertaining to disputed issues is set out in *Stellenbosch Farmers' Winery Group Ltd and Another v Martell et cie and Others* thus: ³

'To come to a conclusion in the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities.'

[15] It is trite that a court must base its conclusion on a consideration of all the evidence. The conclusion reached must account for all the evidence. ⁴ The drawing of an inference requires properly established objective facts.⁵

[16] Considering the evidence as a whole, the probabilities favour the defendant's version. The plaintiff's version is improbable in various respects and is unreliable, specifically pertaining to how the accident occurred with commuters entering through the other side of the train and pushing her out. Although the passage of time and the impact thereon on a witnesses' memory must be accommodated, her version is unsatisfactory and improbable. The discrepancies in her evidence and the tailoring thereof in cross-

² Exhibit A.

³ *Stellenbosch Farmers' Winery Group Ltd and Another v Martell et cie and Others* 2003 (1) SA 11 (SCA).

⁴ *S v van der Meyden* 1999 (2) SA 79 (W); *Seleke* para22.

⁵ *Seleke* paras 24-26 and the authorities cited therein.

examination further taints her credibility. Her version at trial is also at odds with what she reported to Mr Khuzwayo at the time.

[17] It was undisputed that the defendant has a legal duty to protect the plaintiff from physical harm while she uses its transportation services.⁶ That duty is well established and was common cause. The plaintiff's injuries resulting from the defendant's transport services *prima facie* established wrongfulness⁷ and causation was also not in issue. The only issue requiring consideration is negligence.

[18] The plaintiff's case in argument was centrally predicated on the evidence that just before the plaintiff entered the train it was stationary with its doors open. Relying on *Mashongwa*, it was submitted that leaving doors open presents a recognised risk to the safety of passengers utilising the defendant's services.⁸

[19] It is accepted that operating a train with open doors may result in reasonable foreseeable harm. It is trite that the defendant had a legal duty to keep the doors closed while the train was in motion.⁹

[20] On this basis, the plaintiff submitted that If the train was moving with open doors, the plaintiff was negligent. She sought to overcome the difficulties with her evidence by focusing on the common cause facts and relying on the version proffered by the defendant's witnesses. Counsel submitted that it was irrelevant whether the plaintiff was entering or exiting the train, based on common cause facts. Reliance was placed on the defendant's evidence that the train was stationary with its doors open when the plaintiff approached the train and that as the plaintiff was alighting the train, it started moving.

⁶ *Mashongwa v Passenger Rail Agency of South Africa* [2015] ZACC 36.

⁷ *Country Cloud Trading CC v MEC, Department of Infrastructure Development* 2015 (1) SA 1 (CC)

⁸ Paras 47-48.

⁹ *Mashonwa* para 42.

[21] The defendant on the other hand submitted that it did not breach its public law duty to provide safety and security measures and that it was the plaintiff who breached those measures and endangered herself by attempting to board a train which was already in motion. It was submitted that the plaintiff was 100% negligent as the evidence established she was trying to board a moving train and it was not even necessary to go to the alternative of contributory negligence. Reliance was placed on *Kangola*¹⁰ and the Full Court decision of *Seleke*¹¹, which defendant contended was all fours with the present matter.

[22] In *Kangola*, the plaintiff could not explain why no other passenger fell off the overcrowded train when passengers were showing and jostling. In *Seleke* there was no evidence the defendant did not discharge its constitutional duty and no onus on it to do so. In both instances, the plaintiff's claim was dismissed.

[23] It is well established that the defendant has a constitutional duty to ensure that reasonable measures are in place to provide for the safety of rail commuters. The question is whether there is evidence to indicate defendant did not discharge its duty and there is no onus on defendant to do so.¹²

[24] Each case must be determined on its own facts. The facts in the present instance established as a probability that as the train started moving the doors started closing. The doors were thus not completely closed before the train started moving, but simultaneously, the train did not simply depart with open doors.

¹⁰ *David Kangola v Passenger Rail Agency of South Africa* (19806/2021) [2023] ZAGPJHC 436 (8 May 2023)

¹¹ *Passenger Rail Agency of South Africa v Seleke* (A5016/2022) [2023] ZAGPJHC 51 (25 January 2023) (*Seleke*).

¹² *Ibid* para 33.

[25] The defendant could have reasonably foreseen that passengers might be injured if the train departed without the doors being closed. It could have taken steps to prevent harm by simply ensuring that the doors were closed prior to the train being set in motion. That is not however the end of the enquiry as the plaintiff's contended and her own conduct must also be examined.

[26] The evidence established that pre-departure safety measures had been complied with. The whistle had been blown signifying to all commuters that the train was about to move. On the probabilities, after the whistle was blown, the plaintiff should reasonably have foreseen that the train would start moving shortly thereafter. Commuters had thus been warned that it was unsafe thereafter to board the train. That notwithstanding, the plaintiff attempted to do so. The evidence further established that the doors were already closing when the plaintiff attempted to board the train and it had started moving. She should reasonably have foreseen that it was unsafe for her to attempt to do so at that time. It would have been simple for her not to sustain any harm by simply not attempting to board the train.

[27] On a conspectus of all the facts, I conclude that the evidence on the probabilities established contributory negligence on the part of the plaintiff in certain of the respects pleaded by the defendant in its plea in attempting to board the train which had started to move after the pre-departure warnings had been complied with.¹³ In those circumstances, the plaintiff's damages recoverable must be reduced by the degree in which the plaintiff was negligent in accordance with s 1 of the Apportionment of Damages Act 34 of 1956. On a conspectus of all the facts, I conclude that negligence is to be attributed 80% to the plaintiff and 20% to the defendant as it was primarily the conduct of the plaintiff and her own negligence, which resulted in her sustaining the injuries.

¹³ Para 7 of the plea.

[28] There is no reason to deviate from the normal principle that costs follow the result. The plaintiff has been successful in establishing liability on the part of the defendant. Considering the complexities involved, costs on scale B would be appropriate.

[29] In the result, the following order is granted:

[1] The defendant is liable for 20% of the damages suffered by the plaintiff as proved or agreed;

[2] The defendant is to pay the plaintiff's costs on scale B.



EF DIPPENAAR
JUDGE OF THE HIGH COURT
JOHANNESBURG

HEARING

DATE OF HEARING : 06 and 07 MARCH 2025

DATE OF JUDGMENT : 25 MARCH 2025

APPEARANCES

PLAINTIFF'S COUNSEL : Adv J. Kilian

PLAINTIFF'S ATTORNEYS : Lesetja Noko Inc.

DEFENDANT'S COUNSEL : Adv T. Ramatsekisa

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