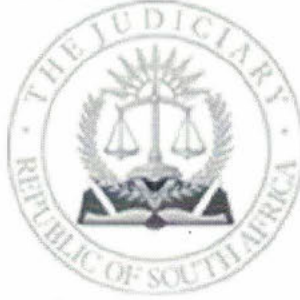


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 12790/2020

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED.
	17/09/2025
	DATE
	SIGNATURE

In the matter between:

HLOPE FEZILE

Plaintiff

And

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Defendant

JUDGMENT

MABESELE J:

[1] This is a claim against the Passenger Rail Agency of South Africa (herein after referred to as "Prasa"). The claim arises from the bodily injuries sustained by the plaintiff in a train, on 15 March 2019. The plaintiff avers that PRASA, at all relevant and material times, including 15 March 2019, managed and was in control of the train and obliged to operate the train in a secure and safe manner.

[2] By Agreement between the parties the trial proceeded on the merits only.

[3] On 15 March 2019, at approximately 8:00, the plaintiff boarded the train at Pilot Station in Katlehong, en route to Park Station, Johannesburg, via Germiston Station. He was going to school in Braamfontein, Johannesburg. He testified that the train normally takes thirty-five minutes from the Pilot Station to the Germiston Station. Since the train arrived late at the Pilot Station on 15 March 2019, it could have taken forty to forty-five minutes to reach the Germiston Station. When the train reached Germiston Station, he disembarked at platform three and walked with other commuters over the bridge to platform five and waited for the train, heading to Park Station. When the train finally arrived and stopped at platform five, he entered the first coach and found three male persons. As he was about to take the seat the men approached him. They called him by name and demanded a cell phone. The train was already in motion with the doors open. He refused to hand over his cell phone. Instead, he moved backwards towards the open door. When he reached the edge of the door, one of the men pushed him with his knee, out of the train. He fell on the ground and broke his leg. The doors remained open for approximately two minutes from the time the men approached him until he was pushed out. The

train had already left the platform when he was pushed out. Two men came to assist him while he lay on the ground. One gave him a cell phone and the other carried him to the platform. Thereafter the security officers came and took a statement from him. He was taken to the hospital by the ambulance.

[4] The plaintiff disputed the version put to him that he ran across the train tracks from platform three to catch the train in platform five, which had already left the platform and traveling at a high speed. When he was confronted with the numerous practice notes which were prepared by his attorneys for purposes of case management wherein mention was made about the overcrowding in the coach, he denied that he gave such information to his attorneys. Regard should be had that the issue of overcrowding in the coach is also mentioned in the pleadings. The plaintiff testified that he was late for classes or lessons on 15 March 2019.

[5] Two witnesses, namely; Ms. Landu and Ms. Mathebula testified for PRASA. They are both in the employ of PRASA as protection officers. Their duties include, ensuring safety of the commuters at the platforms.

[6] Ms. Landu was stationed at the Germiston Station on 15 March 2019. She occupied the office at platform three. She was standing outside the office when the train entered the platform from Pilot Station. After the commuters had disembarked she directed them to the bridge that leads to platforms four and five. Platforms four and five are very close to each other. The distance from

platform three to platforms four and five was estimated to be fifteen meters. Platforms four and five are visible from platform three.

[7] While Ms. Landu was directing the commuters to the bridge, she suddenly saw a tall black man jumping across the tracks from platform three to catch a train at platform five. The train had already left the platform and traveling at a high speed. The doors were closed. While the man was running parallel to the train, Ms. Landu entered her office. She did not see what happened to the man, ultimately. Few minutes after she had entered the office she heard people scream. She went out of the office and saw a group of people gathered at platform five. She went to platform five. Upon arrival at the platform, she found a group of people around a man who lay on the ground with injuries. She peeped through the crowd and noticed that the same man ran across the tracks to catch the train at platform five. She was unable to provide a full description of the man who ran across the train tracks to catch the train at platform five. The plaintiff said that Ms. Mathebula came to the scene.

[8] Ms. Mathebula was stationed at platforms four and five on 15 March 2019. She testified that there was a train that departed from platform five, heading to Park Station. Within few minutes from the time the train had departed she heard a noise. She ran towards the direction of the noise and found the plaintiff lying on the ground and was injured. She took the personal details of the plaintiff. She received different versions from the plaintiff and Ms. Landu on how the incident occurred. The version of the plaintiff which she recorded in the occurrence book is that plaintiff was pushed out of the train whereas Ms. Landu

version is that the plaintiff ran across the tracks to catch the train which was already in motion.

[9] The key issue is whether the plaintiff was pushed out of the train or whether he ran across the tracks from platform three to platform five, to catch the train which was already in motion. The onus of proof rests with the plaintiff. The plaintiff should discharge proof on a preponderance of probabilities. In this regard, the Court in *Sardi and others V Standard and General Insurance Co Ltd*¹ said that:

“At the end of the case, the Court has to decide whether, on all the evidence and probabilities and inferences, the plaintiff has discharged the onus of proof on the pleadings on a preponderance of probability, just as the Court would do in any other case concerning negligence.... The preponderance of probabilities standard requires that the Court be satisfied that an incident or event had happened if the Court considers that, on all the evidence before it, the occurrence of event is more likely than not. Thus, for the plaintiff to succeed the Court must be satisfied that it is more likely than not that the accident happened as recorded by him.² There can be no question of liability if it is not proved that the wrong doer caused the damage of the person suffering harm, and, that, whether an act can be identified as a cause, depends on a conclusion drawn from available facts and relevant probabilities.³

¹ 1977(3) SA 776(A) 780 G-H

² Chauke V RAF [2023] ZAFSHC 214(31 May 2003)

³ Grove V RAF [2011] ZASCA 55 (31 March 2011)

[10] It is so that the train arrived late at the Pilot Station on 15 March 2019. It is for this reason that it took approximately forty five minutes to reach the Germiston train Station, instead of thirty-five minutes which it normally takes to reach the station. The plaintiff was also late for the lectures at school. Since the train reached Germiston Station slightly behind time, logistically, the possibility exists that some commuters would either miss the trains to their destinations or be forced to rush to the respective trains in the different platforms before they depart.

[11] The plaintiff said that he waited for the train at platform five. If regard is had to paragraph ten, supra, this version is not persuasive, unless the plaintiff adduced evidence that the train arrived late at platform five. He denied that there was overcrowding in the coach which he claimed⁴ he entered into and found three men, only. This, is contrary to his own pleadings and practice notes of his own attorneys, which persuade me to accept that there were passengers in the coach some of whom, logically, would have disembarked before the train departed to Park Station. This being the position, they would have been injured if the train was in motion with the doors open. Additionally, it is unlikely that only the plaintiff entered the coach of the (public) train that was heading to Park Station.

[12] Although Ms. Landu does not know how it came about that the plaintiff got injured, her evidence in so far as it relates to the man who ran across the tracks to catch the train at platform five is in line with the version of the plaintiff that the

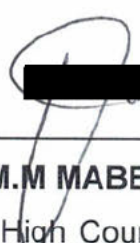
⁴ Emphasis

train reached the Germiston Station slightly behind time and he was late for the lectures.

[13] In light of the shortcomings in the evidence of the plaintiff and his failure to proof that his version is more likely than not that he was pushed out of the train, the claim should be dismissed.

[14] In the result the following order is made:

14.1 The plaintiff's claim is dismissed with costs on Scale B, including costs of two counsel.




M.M MABESELE

(Judge of the High Court Gauteng Local Division,
Johannesburg)

Date of hearing : 27 August 2025

Date of judgment : 17 September 2025

Appearances

On behalf of the plaintiff : Adv. M. Fisher
Instructed by :MED Attorneys
Corner Smith and Broad Road
Bedfordview

On behalf of the first respondent : Adv. T. Tshitereke, assisted by
Adv. S.Pholo
Instructed by : Padi Incorporate
Corner Carse O'Gourie
Houghton Estate