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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Not Reportable

Case no:5883/2020

In the matter between:

S[...] N[...]

PLAINTIFF

and

PASSENGER RAIL AGENCY

OF SOUTH AFRICA

DEFENDANT

Coram: BARENDSE AJ

Heard: 6 & 7 October 2025

Delivered: 14 October 2024

ORDER

1. The Defendant is ordered to compensate the Plaintiff for 100% of such damages that the Plaintiff may prove.
 2. The Defendant is liable to pay the Plaintiff's party-party costs as taxed or agreed on scale A, including the costs of counsel.
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JUDGMENT

BARENDSE AJ

[1] The Plaintiff instituted this damages action against the Defendant arising from an incident that occurred while he was commuting on a train as a fare-paying passenger on 15 June 2017.

[2] The Plaintiff was born on 18 December 2003 and was thirteen years old at the time of the incident. His mother initially instituted the action while he was a minor, and he later substituted her as Plaintiff after reaching the age of majority.

[3] By agreement between the parties, the issues of merits (liability) and quantum were separated, and the trial was set down on the merits only.

[4] In the Particulars of Claim ("POC") the Plaintiff pleaded that the Defendant was established in terms of section 22 of the Legal Succession to the South African Transport Services Act 9 of 1989 ("the Act").

[5] It was further alleged in the POC that by virtue of the provisions of sections 15 and 23(1) of the Act, it was a function of the Defendant to provide transport within, to and from the Republic in the public interest.

[6] Plaintiff pleaded that the Defendant owed him the duty to take such steps as are reasonably necessary to ensure his safety while travelling on one of its trains.

[7] Plaintiff further averred that the Defendant's legal duty arose from the statutory provisions referred to in paragraph 4 above, alternatively from the legal convictions of society.

[8] In support of the alternative basis for the Defendant's legal duty, mentioned above, the Plaintiff averred that:

- (a) Defendant was established in the public interest for the very purpose of providing a rail commuter service, which in turn had to ensure the safe travelling of its commuters;
- (b) Defendant is maintained and operated by public money;

- (c) The vast majority of passengers are compelled to make use of trains because they cannot afford other transport;
- (d) Defendant commands the resources, manpower, and/or security with which to prevent any danger to its commuters; and/or
- (e) Defendant is expected to operate carriages which are safe for the purpose of conveying passengers.

[9] The Plaintiff gave evidence and was the only witness called at the trial. In brief, his version was that at the time of the incident, he was a learner in Grade 7 and used a train daily to commute to and from school. He would use a train in the morning from Phillipi to Mitchells Plain and on his return journey, a train from Mitchells Plain to Phillipi.

[10] On the day in question, he boarded a train in the afternoon in Mitchells Plain, to return home. The train was full so he remained standing as there were no vacant seats. He was positioned about two meters from the door of the carriage. The door of the carriage was open, and some windows thereof were broken. There were no security personnel on the train.

[11] The train moved off, but the door of the carriage remained open. Commuters moved through the carriage to an adjoining carriage and in this process, pushed him towards the open door. He was unable to grab onto one of the rails in the centre of the carriage. Given his age at the time, he was small in stature compared to the commuters around him, ended up being pushed through the open door of the carriage and fell from the moving train.

He at no stage suggested that this resulted from deliberate or criminal acts by other commuters.

[12] Plaintiff testified that his last memory was being pushed off the moving train, and he only regained consciousness when in the Mitchells Plain day hospital, where he learned from a nurse that a person brought him into the hospital.

[13] In its Plea, the Defendant denied all the averments made in the POC. Defendant did not, in the alternative plead, that there was any negligence on the part of the Plaintiff.

[14] The POC reflected the date of the incident as 14 June 2017, during his evidence in chief, the Plaintiff also testified that the incident occurred on 14 June 2017.

[15] During cross examination, it was put to the Plaintiff that the hospital records forming part of the trial bundle reflected the date of admission to the hospital as 15 June 2017. Plaintiff's counsel moved for an amendment of the date in paragraph 3.1 of the POC from 14 June 2017 to 15 June 2017. The amendment was allowed.

[16] Defendant's counsel called Plaintiff's reliability as a witness into question because of the initial discrepancy around the date of the incident. Plaintiff was also cross-examined on the contents of a page forming part of

the Mitchells Plain Hospital's records. This document reflected the mechanism of the injury as a "Fall" and the location of the incident as a "Street/Highway".

[17] Not much turned on the entries in the hospital records. No evidence pertaining to the contents thereof was produced by either party, and the records were not admitted into evidence. In other parts of the hospital records there were references to "Thrown from train" (page 38 of the bundle) and "fell from train" (page 41 of the bundle).

[18] The court found Plaintiff to be a reliable witness, and there was no reason to reject his evidence. In accepting Plaintiff's evidence, the court finds that he fell from a moving train in the circumstances as described by him. This is however not the end of the matter. The further requirements for a finding of liability on the part of the Defendant are considered and dealt with below.

Legal Duty

[19] Plaintiff had the onus to establish a basis for the legal duty which according to him, rested on the Defendant. Reference to this was made in paragraphs 5, 6 and 7 above.

[20] In argument, Plaintiff's counsel referred the court to the judgment by the Constitutional Court in *Mashongwa*,¹ where it was held that public carriers like Passenger Rail Agency of South Africa ("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 between carrier and passenger, usually, but not always based on contract. It also stems from its public law obligations, and this merely strengthens the contention that a breach of those duties is wrongful in the delictual sense and could attract liability for damages. The reference to "PRASA" in *Mashongwa* was a reference to the same Defendant in this matter. services. This duty, in the case of PRASA, arises from the existence of the relationship

[21] *Mashongwa* also confirmed,² that:

'Safeguarding the physical well-being of passengers must be a central obligation of PRASA. It reflects the ordinary duty resting on public carriers and is reinforced by the specific constitutional obligation to protect passengers' bodily integrity that rests on PRASA, as an organ of state.'

[22] Therefore, there can be no doubt that the Defendant owed the passengers who made use of its services, including the Plaintiff, the legal duty as contended for by the Plaintiff. Next, it has to be considered whether there was a negligent breach of this duty.

¹ *Mashongwa v Passenger Rail Agency of South Africa* 2016 (3) SA 528 (CC) at para 20.

² At [26].

Negligence and Causation

[23] The uncontroverted evidence by the Plaintiff was that the door of the carriage in which he was a passenger remained open while the train was moving. His evidence that there were no security personnel on the train was also not rebutted.

[24] In the matter of *Chauke v Passenger Rail Agency of South Africa*,³ with reference to *Transnet Limited t/a Metrorail and Another v Witter*,⁴ the court confirmed that a train moving with open doors constitutes negligence.

[25] A reasonable person in the position of the Defendant would have foreseen that moving trains with open doors posed a risk of harm to its commuters and would have taken reasonable steps to prevent such harm. On the evidence in this matter the carriage in which Plaintiff was conveyed was moving with an open door thereby exposing Plaintiff to risk of harm.

[26] While the Plaintiff also relied on the absence of security personnel as a ground of negligence, there is no evidence on which the court can make a finding that their mere absence amounted to negligence. Further, there is no evidence on which it can be found that their presence would have prevented the incident.

³ (8394/13) [2015] ZAGPPHC 1075 (9/12/2015).

⁴ 2008 (6) SA 549 (SCA).

[27] In the circumstances, a finding of negligence is made. The next question that arises is whether causation was established between the Defendant's negligence and the Plaintiff being pushed or falling from the moving train. The answer to this question is a very simple one. Had the doors of the carriage in which the Plaintiff was conveyed been closed, Plaintiff would, on the probabilities, not have been pushed from or would not have fallen off the moving train.

Wrongfulness

[28] Having found that there was a negligent omission, it must be considered whether this omission was wrongful. As a matter of legal policy, an omission is wrongful when the legal convictions of the community regard it as wrongful. The convictions of the community must be determined with reference to the norms and values embedded in our Constitution.⁵

[29] In *Mashongwa*, it was held that:

"The norms and values derived from the Constitution demand that a negligent breach of those duties, even by way of omission, should, absent a suitable non-judicial remedy, attract liability to compensate injured persons in damages"⁶

[30] The court accordingly finds that the omission by the Defendant was wrongful. The Plaintiff has therefore discharged the onus of satisfying all the elements of the delict on which his action is based.

⁵ *Minister of Safety and Security v Van Duivenboden* 2002 (6) SA 431 (SCA).

⁶ *Mashongwa* at para 26.

[31] For the reason contained in paragraph [12] supra, this court cannot and may not assess, on Plaintiff's own version, whether he was contributory negligent. The provisions of the Apportionment of Damages Act 34 of 1956 were not triggered.

[32] The Defendant is therefore liable for one hundred percent of such damages that the Plaintiff may prove.

R BARENDSE
ACTING JUDGE OF THE HIGH COURT

Appearances

For Plaintiff: Adv R Liddell

Instructed by: Laubscher & Hattingh Attorneys

For Defendant: Adv R Maisela

Instructed by: Makhubela Attorneys