



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

JUDGMENT

Case No.: 21189/2019

In the matter between:

JACOB COLIN BARNETT

PLAINTIFF

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA

DEFENDANT

Neutral citation: *Jacob Colin Barnett* (Case no 21189/2019) [2025]
ZAWCHC (01-12-2025)

Coram: PATHER AJ

Heard: 21 October 2025 and 19 October 2025

Delivered: 01 December 2025

JUDGMENT

PATHER AJ:

[1] The Plaintiff in this matter is a 72-year-old male retiree, who instituted this action against the Defendant in November 2019. This is a delictual claim based on damages that the Plaintiff suffered as a result of an incident that occurred whilst he and his wife were traveling as passengers on a passenger train, operated by the Defendant.

[2] The Plaintiff boarded a Metrorail train at Cape Town Station, en route to Retreat Station. The train stopped at Hazeldene Station, and according to the Plaintiff and as stated in his particulars of claim, 3 unknown males, together with a woman boarded the train at this station.

[3] The Plaintiff further stated that whilst the train was travelling between Athlone and Crawford Stations, the three unidentified males who had entered the train at Hazeldene Station began to harass him and his wife. The Plaintiff stated that he and his wife were scared and they both tried their best to avoid the unwarranted interaction but their efforts were successful. The Plaintiff motioned to his wife to change seats as well, to as avoid the interaction but this prompted the unidentified individuals to follow them.

[4] The Plaintiff stated that the men tried to rob him and his wife of their belongings, and in doing so, one of them pulled out a knife, a scuffle broke out, and this resulted in the Plaintiff sustaining a wound to his hand. In addition, one of the men had tried to, and managed to pull at the Plaintiff's wife's handbag and made off with it. As the train pulled into Crawford Station, the three males left the train, and the Plaintiff out of fear and panic ran out of the train onto the platform to find a security office or someone in charge to get assistance. The Plaintiff stated that he was aware that there was someone that was a security or in charge and he was described as the one with the whistle. The perpetrators were then violently attacked by other passersby on the platform at Crawford Station, and presumably, when they alighted the news that they had attacked a passenger had spread. The Plaintiff also informed the court that

he was able to find his wife's bag, which was dropped in another section of the train, and which he believed the perpetrators dropped whilst they were exiting the train. Before the train pulled out of Crawford Station, a woman, that was on the platform, threw a brick toward the Plaintiff, into the open train doors, which hit him on his nasal bone, causing him immediate pain, followed by extensive bleeding.

[5] The Plaintiff alleged that the incident occurred solely as a result of the negligence of the Defendant.

[6] Plaintiff stated on the pleadings and through argument from counsel that the Defendant owed the Plaintiff a duty of care and protection, and that the Defendant had failed to provide adequate, if not any security on the train. The Plaintiff contended that the incident would not have occurred had there been sufficient supervision, or panic buttons installed or some form of deterrence where passengers were protected. There was also no video or camera surveillance system that was installed. The Plaintiff could not be certain that the perpetrators were fare paying passengers, as there was no one on the train that was checking tickets. Even after the incident happened, there was no presence of security to assist the Plaintiff or his wife.

[7] The Plaintiff stated that he suffered various injuries, inter alia; emotional shock, trauma, soft tissue swelling in his face, head injury. The Plaintiff had to receive hospital care, and he also suffered from pain and discomfort.

[8] The Plaintiff claimed R100 000 for his past and future medical expenses, and an amount of R500 000 for general damages.

[9] The Defendant's defence and Plea amounted to a bare denial. It even denied that the Plaintiff was a fare paying passenger. The only aspects of the Plaintiff's claim that was admitted was the identity of the Plaintiff, the fact that Defendant operated and owned trains travelling from Cape Town to Retreat stations on the date of the incident. The Defendant specifically denied that its employees were negligent, denied that there

was any connection between the brick being thrown through the train door as it was about to close at the platform, and denied consequentially that any injuries sustained by the Plaintiff was as a result of the brick being thrown. The Defendant denied that a brick was in fact thrown at the Plaintiff.

[10] The Plaintiff relied on his own evidence, and the psychological assessment report prepared by clinical psychologist Anton C Bohmer.

[11] The Plaintiff gave evidence, and he described how the incident occurred. He recounted the sequence of events. The Plaintiff was confused at times, however, it was hard not to see his honesty and truthfulness about the incident. It was clear that the Plaintiff had left the litigation and proceedings to the attorney, and he displayed honesty when questioned about the pleadings and whether he had perused same.

[12] The Plaintiff answered questions that were put to him simply and where he could, he assisted the court to understand the layout of the coaches, the direction doors of the train, the seating arrangements and the different categories of coaches. The court was impressed with the Plaintiff and despite there being the confusion with the number of perpetrators that were present, the discrepancies with the particulars of claim and the events on the day, the court found that the Plaintiff gave an honest and reliable account of what had happened. The Plaintiff could not be held responsible for the pleadings drafted by his attorney, and he did not make any excuses as far as that was concerned. The Plaintiff maintains a calm and clear disposition at all times and despite cross-examination by the defendant's attorney, the Plaintiff was resolute in his version. He seemed to project being surprised that his integrity was being questioned.

[13] The Court was impressed with the evidence of the Plaintiff and can see no reason why he would go to any elaborate lengths to make up a story.

[14] The Court had regard to the expert report of the clinical psychologist and notes that there were differences in the allegations as set out in the particulars of claim, and

that as set out in the report. The court however accepted the evidence by the Plaintiff and the court accepted that the Plaintiff was not given the report to check; and that he cannot be held liable for the psychologist possibly recording the information down inaccurately or based on her interpretation.

[15] The Plaintiff was the only witness who testified. The Plaintiff was criticized for this, and it was suggested during argument that the Plaintiff could have called his wife to give evidence as she was an eyewitness at the scene. The Defendant did not call any witnesses to deal with its defence and argued that it need not have done so as the onus of proof rests on the Plaintiff.

[16] It is the Defendant's case that the Plaintiff was an unreliable witness, who contradicted himself, and that the Court should see this as a failure to discharge the onus on a balance of probabilities.

[17] The Defendant's counsel emphasized that there was a significant discrepancies in the pleaded case, the report given to the psychologist and the witness's evidence.

[18] The Plaintiff was also criticized that on the one hand, he stated that the train had no security, however, he had purchased a metro Plus ticket for the reason that this provided "some sense of security".

[19] The Defendant's case was further that it was an unrealistic expectation to have three security guards posted at every coach. It was an unrealistic requirement and one that was not legally binding on the Defendant.

[20] The Defendant found fault with the fact that the Plaintiff did not pursue the criminal case with the South African Police Services. It was stated that the Plaintiff did go to report the incident, however, the police did not want to open a docket as the

Plaintiff was unable to identify the perpetrators. The Defendant is of the view that this Court must take a dim view of the Plaintiff for this reason.

[21] The Defendant contended that the Plaintiff's claim ought to be dismissed with costs.

[22] The Court notes that the Plaintiff's pleaded case differed from its argument at trial. The defendant in its Plea denied that the Plaintiff and his wife were fare paying passengers yet conceded this in argument. The Defendant also accepted that there were limited security patrolling the train and the stations, but states that this is not a legal requirement. The Defendant wants this court to look at the fact that the pleadings drafted by lawyers, the report of the psychologist and its respective contents to be attributed to the Plaintiff. It is a known fact that litigants leave matters such as these in the hands of the legal representatives. The Court does not take a negative view of the Plaintiff because he admitted to reading the particulars of claim at court for the first time. This is not unusual. Similarly, the Plaintiff cannot be called to be unreliable as a witness due to inaccuracies in the psychologist's report.

[23] The Court accepts the Plaintiff's version that both he and his wife were accosted on the train, and that they moved seats to avoid the perpetrators, and they tried their best to protect themselves.

[24] The court also accepts that the Plaintiff was fearful of what may happen to him, and his wife given their ages and the fact that they faced three men, one of whom was armed with a knife.

[25] The court also accepts that it is not unrealistic to expect to have security on a public train, and at the various stations. The fact that the Plaintiff paid a little extra for a better train ticket and that he thought this would afford him greater security meant that he expected to be safe. He was anything but safe. In fact, the defendant should not have sold tickets that are more expensive if it could not provide the benefits that

accompany such a ticket. There was nobody checking tickets on the train, and this is how the perpetrators were able to approach and harm the Plaintiff.

[26] The Defendant is critical of the fact that the Plaintiff went to the hospital to nurse his injuries first instead of going to the police. This criticism is astonishing.

[27] There is no reason to doubt the Plaintiff when he says that the SAPS refused to open a docket as Plaintiff could not identify the perpetrators. This is not an uncommon occurrence on the part of the police. In fact, it was incumbent upon the police officer to have opened a docket and investigate the matter. Also, clearly, the Defendant itself could not investigate the matter as it has no surveillance footage or witnesses in the form of security guards who could offer any assistance about the occurrence of the incident. The Court would have thought that the Defendant would have made attempts to get an investigation underway. Instead, the defendant criticizes the Plaintiff.

[28] The Defendant called no witnesses, and this is indicative of the fact that there is no one to testify to the version that has been pleaded by the Defendant. This was consistent with its plea being a bare denial, as realistically, the Defendant had not a single shred of evidence to deal with any of the plaintiff's allegations. If the Defendant had cameras installed it may have had some information, if it had guards, there may have been a report, but this was all glaringly absent.

[29] This court has no reason to believe that the Plaintiff did not suffer injuries from the incident that occurred on the train on 26 May 2019. The Court also accepts that the incident left the Plaintiff feeling anxious, scared and traumatised. The Plaintiff commented that he cannot take the train like he used to and he has to incur costs to travel by car, whereas the train is a cheaper and more affordable mode of transport. This is concerning as majority of the South African public rely on public transport as the other modes are expensive. This fear will prevent people from using the train yet their protection and the right to be safe whilst using public transport is one that is protected by our Constitution.

[30] As alluded to above, the Plaintiff's expectation to be safe on a public train operated by the Defendant was not unrealistic, and that the Defendant bore a duty to ensure reasonable measures were in place to provide security for the Plaintiff as set out in the authority of **RAILWAY COMMUTERS ACTION GROUP v TRANSNET LTD t/a METRORAIL (CCT56/03) [2004] ZACC 20; 2005 (2) SA 359 (CC)**.

[31] It cannot be overlooked that the duty to prevent harm to commuters is a legitimate Constitutional right that the passenger must be able to rely on. It is a well-known fact that the trains and buses are used by commuters who fall within the less privileged economic sectors, and where they are reliant on the public transport system given their financial circumstances. The Plaintiff states that he was aware of the risks and this is the reason why he bought a metro plus ticket, which he kept safely in a plastic sleeve that he paid R5 for. He also stated that this was not a once of ticket but a monthly pass. In **Mashongwa v PRASA 2016 (3) SA 528 (CC)**, the court stated at paragraph 29:

"It is this context of legal duty that falls on PRASA's shoulders must be understood. That PRASA is under public law duty to protect its commuters cannot be disputed. This much was declared by this Court in Metrorail. But here this Court goes a step further to pronounce that the duty concerned together with constitutional values, have mutated to a private law duty to prevent harm to commuters"

[32] This cannot be ignored in the present matter and the minimum expectation by the Plaintiff and his wife was that of being safe whilst going home. The Plaintiff was emotional in his evidence; he expressed that he felt helpless and that he was unable to protect his wife and that she had to undergo the trauma of the incident. He went further to say that as a man, he should have been able to look after his wife, and he felt very sad that her bag was cut off by the perpetrators. This Court accepts that there was a breach of duty by the defendant to the Plaintiff and that this breach of duty of care constitutes wrongfulness on the part of the defendant

[33] This Court is assessing the evidence and is satisfied that the Defendant did not have a security guard on the train that the Plaintiff was on, did not have security in the Metro Plus coach, did not have security at the platform in Crawford Station where the brick was thrown at him, and also had no assistance available on the train to help with the emergency with the brick being thrown at the Plaintiff. The Plaintiff and his wife, in the state of fear, shock and trauma had to continue on their journey to Retreat Station, make their way home, clean up the blood and then get to the hospital.

Thulare J sated in the authority of **Mkhize v Passenger Rail Agency of South Africa 2025 JDR 2863 (WCC)**:

“The level of violence on commuters’ trains in the Western Cape is a matter of public record. It led to formations of interest groups that approached courts for intervention including up to the Constitutional Court. The decision in Metrorail is a classic example. The litigation in the civil courts against the defendant, and the prevalent prosecution of Skollies who commit crime on the trains in motion, including those who board trains when they stop at signals to rob commuters in the carriages and alight either when the train starts moving or at the next station, especially on the northern line, is notorious in the Western Cape. I am not persuaded that the measures provided by the defendant were consonant with a proper appreciation of its duty against the background of the challenge from skollies to its commuters in the Cape Metropolitan area but especially on the northern line. The absence of protection services consistent with the levels of crime in the deployment of resources on the northern line was negligent.”

[34] The Defendant has not shown that it had taken any steps to provide security, thus exposing the Plaintiff and other commuters to harm. The Court has to consider what the position would have been had there been security on the train and at the platform, and the Court cannot believe that this would not have been a deterrent. Had there been visible security, there is every likelihood that the perpetrators would not have entered the train or if they did, they would have been concerned to have interfered with the Plaintiff. The Defendant made it easy for the perpetrators to enter the train as it did not even check whether fare paying passengers were travelling on the train.

[35] I am satisfied that the Plaintiff has proven his case and that it was the defendant's failure to safeguard the Plaintiff whilst he was a passenger on the train, that ultimately resulted in the injuries that he suffered from the incident where the brick was thrown at him. I am unable to find that the Plaintiff could do anything to prevent the attack on him, and he was an innocent passenger.

[36] Accordingly, this court makes the following finding:

Order

1. That the Defendant is liable for the Plaintiff's proven or agreed damages;
2. That the Defendant pay the Plaintiff's costs, with counsel's costs to be on Scale B;
3. The issue of quantum is adjourned *sine die*;
4. That the Plaintiff is afforded preference in regard to the setting down of the issue of quant

PATHER AJ

ACTING JUDGE OF THE HIGH COURT

Appearances

For Applicant: D Filand (C Carolissen)

Instructed by: Erasmus Ronchad & Associates

For Respondent: C Crafford

Instructed by: Crafford Attorneys