

**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NO.: D5859/2021

In the matter between:

MDUMISENI THEOLUS MXOLISI GUMEDE

Plaintiff

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Defendant

JUDGMENT

Olsen J:

[1] On Saturday 15th December 2018, at between 5.00 am and 5.30 am, the plaintiff in this matter, Mr M T M Gumede, was severely injured in a train accident at the Merebank station. The train concerned is one operated by the Passenger Rail Agency of South Africa ("PRASA"), the defendant in this matter.

[2] Mr Gumede sued PRASA for some R4.75 million in compensation, alleging that the injuries he suffered were caused by the negligence of the driver of the train. (Counsel for the plaintiff made nothing of the fact that the evidence led on behalf of the plaintiff concerned, ultimately, negligence on the part of the train guard rather than the train driver.) An order was made separating the issues of the precise particularisation of the injuries suffered by the defendant, and the quantification of damages flowing from such injuries, for later determination. On the merits of the case, which require adjudication at this stage, the accounts of the incident given by Mr Gumede and PRASA are mutually destructive. Neither party argued at the end that there was contributory negligence on either version. Counsel presented their cases upon the basis that on the plaintiff's part, acceptance of Mr Gumede's evidence results in a conclusion that PRASA are entirely responsible for the incident; and in the case

of the PRASA witnesses, if they are believed, the incident was Mr Gumede's fault and no responsibility can be attributed to PRASA and its employees or agents. I am not at all certain that this is the correct approach if the court accepts Mr Gumede's account of events. But, as will be seen, I do not reach the point where that issue might arise.

[3] According to Mr Gumede he arrived at the Merebank station that morning in order to catch the train home after a 12-hour shift as a security guard. He found the train he intended to catch stationary on the platform with the coach doors open. He stepped into the coach without having heard the normal whistle blown by the train guard stationed on the platform adjacent to the rearmost coach in which the guard rides. The whistle signifies a warning for passengers to either enter the train or to stand back from it, as it is about to depart. The doors of the train then closed, but in his case they closed onto his backpack which was protruding into the doorway. The train started to move. Mr Gumede struggled to free his backpack. On his version the door which trapped his backpack opened a little which resulted not only in the freeing of the backpack, but in Mr Gumede falling out of the train and onto the platform. The train was still moving. In some or other manner, after Mr Gumede fell onto the platform, he fell into the gap between two passing coaches, and from there onto the ground beneath the train, resulting in horrible injuries, in particular to his legs. (One of them appears to have been separated from his body at the site of the incident, and the other one suffered a crushing injury resulting ultimately in amputation.)

[4] Mr Gumede denied that he had observed any PRASA employees at the station, and more particularly on the platform, when he arrived on the scene; and that he had said anything to those who had attended on him after the accident to convey that the incident happened in any way other than the one I have just described.

[5] Under cross-examination Mr Gumede contradicted his evidence in chief by alleging that in fact the closing door of the coach also trapped a portion of his body as opposed to merely the backpack; and by giving an alternative description of his posture when he fell onto the platform. His evidence in chief conveyed the image of a man falling backwards through a partly open coach door onto his back on the platform, and moving away, once down, to clear the train using his arms and hands on the platform. In cross-examination he deviated from that saying that he fell onto his face

(which suggests that he left the coach face first) and that his legs might have been somewhat left behind. Mr Gumede's his version given in chief makes more sense. But it is difficult on either version to see how Mr Gumede would have found himself falling between two coaches onto the railway line. Photographs of a similar train with coaches at the Merebank station were produced in evidence. It is not disputed that gap between the sides of a coach and the platform is so narrow that no person could fall through onto the railway line. To be fair to Mr Gumede, and to his version, although this train was only just departing the station, (and in fact did not leave the station because it was stopped promptly when the accident was noted, a subject dealt with hereunder), I think that the motive force required to move a train is so high, and the weight of a man like Mr Gumede relatively so insignificant, that the interplay between the two is difficult to understand for the purpose of determining whether Mr Gumede's account of events is a possible scenario.

[6] Mr Gumede was conscious after the accident. He heard some people gathered around and raised his hand to indicate that he was still alive. Later on persons he called "fire fighters" came and managed to get him clear of the position in which found himself after the accident. He was lifted up to the platform, from where he was taken to hospital by ambulance. He was conscious throughout the period before medical assistance was given.

[7] The essential features of PRASA's case (dealt with hereunder) were put to Mr Gumede in cross-examination, and denied. He also denied having spoken to any PRASA official at the Merebank station after the event.

[8] The second witness led in the plaintiffs case was Mr S Lembede. He was an acquaintance of Mr Gumede who happened to be on the same train that morning. He had boarded the train earlier and was sitting with his back to the platform and did not see any of the events which led to Mr Gumede's injuries. The main purpose of calling him appears to have been to establish that the usual whistle, warning of the impending departure of the train, was not sounded. Mr Lembede's evidence was that he did not see any PRASA officials around when he walked down the stairs onto the platform in order to gain access to the train. He only saw PRASA officials after the event. On the day in question the doors closed and then the train commenced moving. It was still at the platform when he heard people saying someone was under the train.

The train came to a standstill. He got out and followed people to the scene at which they were congregating, where he saw that it was Mr Gumede under the train.

[9] Mr Lembede's evidence is a little confusing in some respects. He spoke about the "driver" of the train walking up and down between the railway lines looking to see what had happened, speaking to the plaintiff while he was lying prone on a stretcher on the platform, saying that he would go and check the CCTV, and reporting back that it was not in operation. The difficulty is that Mr Lembede described this person as a white male. On PRASA's version no white male was involved on that day. In particular, the driver was a black female, who gave evidence.

[10] At the close of the plaintiffs case I was under the impression that the two witnesses who had been called had, from the perspective of demeanour, performed satisfactorily. I have already mentioned those respects in which Mr Gumede contradicted himself. As far as the sounding of the whistle is concerned

- (a) Mr Gumede said it might have occurred before he boarded the train, but whilst he was still out of hearing; and
- (b) I am not convinced that Mr Lembede is that certain about his claim that the whistle was not sounded. He was already on board the train before the doors closed. Being there already, the blowing of the whistle was not of any significance to him, and, as was said during PRASA's case, it does not sound as loud inside the coaches as it does outside on the platform. Mr Lembede's evidence that the whistle did not sound may be a reconstruction, perhaps an innocent one born of his reflections later on as to what had happened that day, and why.

[11] The photographs of the train which were put in by consent depict, inter alia, the front and the back of a coach and the manner in which the coaches are linked together. There are what appear to be hydraulic pipes, and what appears to be at least one electrical connection, which have to be plugged into each of the two coaches which are joined together in train. Judging from the photographs, making these connections from ground level would be impossible because they are set too high. Perhaps to address this problem, the coaches are fitted with a small foot plate outside the front and rear ends, onto which, judging from the photographs, it might be difficult to fit both ones feet; and an associated hand rail upon which a person standing on the

foot plate might hold himself up whilst connecting, inter alia, the hydraulic pipes linking the coaches. Perhaps the footplates are used by PRASA employees during shunting operations. It is undisputed that at times persons who are supposed to be passengers riding inside the coach choose for one reason or another to ride the train by standing on the foot plate and holding onto the handle. The defendant's first witness, Ms N A Sosibo, was at the time employed by a security company contracted to PRASA, with the responsibility to patrol platforms and look to the safety of passengers. One of her duties was to try and stop passengers mounting the outside of a coach in this manner. Mr Gumede himself said that he had seen people doing that on many occasions. The practice is apparently called "staff riding", a term perhaps derived from the purpose for which the foot plate and the handle are installed on each coach.

[12] Ms Sosibo came on duty on the morning of the incident, and was walking down the stairs to the platform when Mr Gumede came running past her, wanting to catch the train which was already moving. She says that the doors were closed and she admonished him to wait for the next train but he shouted out that he had been on night shift and wanted to get home. According to her Mr Gumede tried to take hold of the handle with a view to standing on the foot plate, but fell between the coaches. She was at that stage running after him. The train stopped. She saw him lying injured on the ground beneath the train. He was conscious. He was crying or crying out and said to her words to the effect "my sister you have been warning me", and he asked for help. She noted how severely he was injured.

[13] The second defence witness was Mr L M Mvuna. He was the train guard on duty on the day. Mr Mvuna described the duties of the guard, something with which he was familiar both by virtue of his training and 17 year's service as a train guard.

[14] The guard's station is at the back of the train. When a train arrives at the station and stops the guard presses a button in order to release the passenger coach doors. This system of controlling doors is directly under the control of the guard. The guard must then alight and stand on the platform in order to observe the passengers alighting and those boarding. When that is done, and all is clear, the guard blows his whistle from the platform in order to indicate that the train is about to depart. The guard enters his coach and presses the button which activates the closure of the doors.

Having done that the guard presses another button which sends a signal to the driver that the train may depart. As the train is departing the guard will put his head outside the cabin window in order to continue to observe the platform. If, as was the case with Mr Gumede, something goes wrong as the train is leaving, the guard presses another button to signal to the driver to stop the train.

[15] According to Mr Mvuna the usual process was followed on the morning in question. By virtue of the early hour, and perhaps also because this was a Saturday, there were not a lot of passengers; that is to say the station was not busy. When he saw that there were no more passengers to board Mr Mvuna entered his coach and pressed the button to close the doors. When the doors were closed, a condition signalled by a light, he sent the signal to the driver to leave the station, and the train commenced moving.

[16] At this stage Mr Mvuna looked outside onto the platform once again whilst the train was moving. He saw Mr Gumede attempting to take hold of the handle and to "staff ride". Mr Gumede fell. Mr Mvuna gave the driver the signal to stop the train, which was done whilst the coaches were still adjacent to the platform.

[17] Mr Mvuna did not go to attend to the plaintiff. He explained under cross-examination that he could not cope with the sight of blood. He said that Mr Gumede was attended on the scene by a security officer (presumably Ms Sosibo) and the driver of the train, a Ms Fakude. However he reported the incident to his base.

[18] After the cross-examination of Mr Mvuna had already commenced, I was informed that the plaintiff's counsel wished to have access to statements which had been made by the defendant's witnesses. As I understood it the request was to address the question as to whether the evidence of PRASA witnesses was a recent fabrication designed to enable PRASA to avoid liability. A bundle of papers was produced, including statements made respectively by Ms Sosibo and Mr Mvuna. The parties agreed that they are what they purport to be. It was recorded that the plaintiff made no admission as to the truth of the contents of the documents but required them to be available for use in cross-examination of the defendant's witnesses. It was recorded that the defendant consented to such use of the documents but specifically

made the admission that PRASA's insurers had repudiated the claim on the basis of the reports contained in the bundle. Cross-examination of Mr Mvuna then proceeded.

[19] Mr Mvuna said that his statement was taken by his shop steward. He gave an account of what had happened and the shop steward wrote out the statement. The only conflict between the statement signed by Mr Mvuna and his evidence in chief was a passage in the fifth paragraph of the statement which read as follows.

"I went to check where the male in question fell and saw him underneath the train between the train and the platform with both his feet amputated..."

Mr Mvuna's response to this being put to him was that he had not said that to the shop steward. He confirmed that his fear of the sight of blood prevailed on that day. He relied on the shop steward to record what he said accurately.

[20] The next witness for the defence was the train driver, Ms E Fakude. She was alone in the driver's cabin on the morning in question. After only about two coaches had left the platform she received the signal to stop the train, which she did. She waited for a while, and having not received the signal to proceed, she left the train and got onto the platform. She was directed to the scene by the guard, Mr Mvuna. There she found a man lying between the coaches. He was in shock. He asked to be moved. She informed him that they had to wait for the people who would do that.

[21] Ms Fakude's evidence is that whilst talking to him he apologised and said that he was in a rush and wanted to get home to sleep. She did not ask him how the accident had happened, and eventually the paramedics arrived to extract him from his position.

[22] Ms Fakude was challenged upon the basis that her somewhat brief statement to the Depot Manager did not include an account of her talking to Mr Gumede. Her response was that she did not think that her report required that information. (I note that the report is only eight lines long.)

[23] Mr W P Mncwabe was the final witness for the defendant. He was employed by PRASA as a protection official. He received a call on the morning of the incident telling him that it had occurred. He got there quite promptly. He took over from the security guard at the scene.

[24] Mr Mncwabe introduced himself to Mr Gumede as a security officer there to assist him. He asked Mr Gumede to furnish his personal details and Mr Gumede was able to do that. Mr Gumede also said to Mr Mncwabe that he had tried to run after the train when the accident occurred.

[25] Mr Mncwabe's assessment of the mental condition of Mr Gumede at the scene was sought in cross-examination. He said that Mr Gumede was in shock, but not confused. He was challenged as to whether this was an opportune time to question Mr Gumede. His answer was that Mr Gumede was in a bad condition. His duty was to comfort Mr Gumede and try and calm him down. He said that at the time Mr Gumede had not realised that his "feet had left his body", as he said that he felt something pressing down on him. According to Mr Mncwabe "we had to move his mind away from what was happening".

[26] In presenting her argument for the plaintiff counsel has argued that the defendant's version is "improbable, unreliably corroborated, and internally contradictory". In my view there is no merit in those contentions. Given their different roles at different times there is hardly room for the witnesses to corroborate one another in any material respect. Each of the defendant's witnesses was unmoved in cross-examination, and answered the questions posed without any difficulty. Their evidence was consistent throughout. All of them presented as honest witnesses giving an account of what had occurred as best as they could.

[27] Counsel for the plaintiff also argued that an adverse inference should be drawn against the defendant as a result of what she describes as a "failure to produce operational records and footage peculiarly within PRASA's possession". The evidence of the defendant's witnesses is that the CCTV camera system was out of order on the day in question. I do not regard evidence to that effect as improbable; it is within the realms of ordinary experience that equipment fails from time to time and that the repair of it is often delayed. The reports making up the "PRASA Joint Operation Centre Report" were provided at the request of the plaintiff. They are consistent with the account of events given by the defendant's witnesses.

[28] I find that there are no grounds upon which to make a credibility finding against the defendant's witnesses. Insofar as the evidence concerns what Mr Gumede said whilst they attended to him after the accident, their version is not improbable. Mr Gumede was in a state of shock, but nevertheless conscious and in a dire condition. I do not regard it as improbable that he would have thought it necessary to explain himself, that is to say to explain how he got to be where he was. It is unlikely that at a time like that he would reason that he had best be silent lest he compromise a potential claim against PRASA.

[29] I have already drawn attention to certain contradictions in Mr Gumede's evidence. I would imagine that if his account of how the accident happened is broadly correct, those contradictions might very well be the product of confusion on his part as to how he fell from the train. They are not decisive.

[30] This case turns on the probabilities. Mr Gumede was at the time a 33 year old man. This was a train he caught regularly to get home after work. He had missed it before. According to his evidence if you missed that train you would have to wait 15 to 20 minutes for the next one on a weekday. But on weekends (which this was) the wait would be about one hour. By his own admission he was aware of the phenomenon of "staff riding". There is nothing inherently improbable in the defendant's contention that Mr Gumede was trying to do just that on the day in question.

[31] It cannot be disputed that Mr Gumede was injured by falling between two coaches. The difficulty with Mr Gumede's description of the incident is that it offers no explanation for how he came to fall between two coaches when, on his own account, he fell out of the train onto the platform. Accepting that "anything is possible" lends little support to the proposition that Mr Gumede's version is probable. On the other hand the defendant's version of the incident furnishes a clear and probable account of how Mr Gumede would have fallen between two coaches.

[32] In my view the probabilities favour the defendant's account of events. The plaintiff's claim accordingly fails. I make the following order.

The plaintiff's claim is dismissed with costs.


Olsen J

Case Information:

Date of hearing: 27 – 29 October 2025

Date of delivery of written submissions: 5 November 2025

Date of Judgment: 12 November 2025

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