



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

Case no: 11292/2018

In the matter between:

JODY PRETORIUS

PLAINTIFF

and

PRASA

DEFENDANT

Coram: BHOOPCHAND AJ

Heard: 08 October 2025, 6 February 2026

Delivered: 17 February 2026

Summary: Delictual claim against public rail carrier. The issue of liability requires proof of an act or omission, wrongfulness, negligence and causation. Plaintiff, a solitary witness on events that occurred on Defendant's train, discharged the onus. Defendant closed its case without leading any evidence. As an organ of state, the Defendant is required to present evidence to the Court outlining the reasonable steps taken to avoid liability based on negligence. The defendant did not fulfil this obligation. Defendant is liable for the Plaintiff's yet to be proven damages.

ORDER

1. The Defendant is liable for the yet to be proven damages suffered by the Plaintiff while travelling on the Defendant's train on 28 September 2017.
 2. The Defendant shall pay the Plaintiff's party and party costs and Counsel's fees on scale B.
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JUDGMENT

Bhoopchand AJ:

[1] The Passenger Rail Agency of South Africa (PRASA/ the Defendant) operates the passenger trains on the Cape Peninsula. The Plaintiff, Jody Pretorius ('Pretorius/the Plaintiff) testified. He is a 28-year-old employee of a software company. About eight years ago, he commuted to and from work between Kuils River and Claremont on the Defendant's trains. Pretorius boarded the train at Claremont station on the southern line to Cape Town. He then boarded another train from Cape Town to Bellville and from there a third train from Bellville to Kuils River on his way back home. He was a fare-paying passenger. The entire trip took about an hour.

[2] On 28 September 2017, Pretorius boarded the third train from Bellville to Kuils River. The door closest to the platform closed after the train departed Bellville station, but the doors on the opposite side of the carriage remained open. He tried to exit the train at Kuils River station but could not as other groups of commuters entered the train and prevented him from alighting.

Pretorius, acting on the advice of another commuter, resolved to get off at Blackheath station and board another train back to Kuils River. Whilst conversing with the other commuter, he became aware of two persons and commuters screaming. The two people exclaimed: 'phone'. He ignored them. He was standing about a metre from the open doors. He was forced out of the train either by being pushed or kicked by the two assailants. He did not see who pushed him. He lost consciousness.

[3] His following recollection was when someone asked him if he was okay. He fell in and out of consciousness and eventually noted that he was in the hospital. He sustained a skull and left shoulder injury. He spent about five days in the hospital. Pretorius was taken through the content of the hospital notes, which at first stated that he was on his way home in a train and did not remember what happened. A later note stated that he was pushed out of a train. After his discharge from the hospital, Pretorius went to report the incident at the police station as a case of assault. He confirmed the police docket entry that recorded the mode of injury as being kicked or pushed out of the moving train, and the Defendant's final incident report that referred to him saying that he was pushed from the moving train.¹ He also confirmed that he suffered the injuries depicted in the photographs in the trial bundle.

[4] Under cross-examination, Pretorius testified that he bought his ticket at Kuils River station. He paid R120 for a monthly ticket and R80 for a weekly ticket. The copies of the tickets he filed were for the period material to this claim, but reflected travel from Kuils River- Century City- Claremont and reflected the amounts of R90 and R280. He did not deny the difference in price reflected on the tickets. He stated that he bought the tickets and explained that he attended college at Century City and did his internship in Claremont. This

¹ The Plaintiff's statement included in the police docket was deposed to on 4 October 2017. The Defendant's final incident report was dated 15 September 2025

necessitated him having two tickets, the one a monthly ticket and the other a weekly ticket.

[5] The Plaintiff testified further in cross-examination that he could not get out at Kuils River and was forced back to the middle between the two doors. There were people in front of him, but none between him and the open doors. Although many people entered the train at Kuils River station, the train was not overly crowded. The assailants approached him a few minutes after the train departed Kuils River station. All he heard was 'phone'. Under further cross-examination, he contended that the train was not overly overcrowded. He moved from the centre closer to the bars by the door. He saw the assailants over his shoulders. Two assailants were talking to him. All he heard was 'phone'. He ignored the two assailants. When he turned around, they were looking at him. He did not know that they were talking to him. He was either kicked out or pushed when they held his mid to lower back. A 'big force ' was applied, and he lost his balance. He had no further recollection until he was taken home and then to the hospital.

[6] Plaintiff was challenged about the discrepancies between his statement made to the police and his testimony. The statement was taken under oath on 4 October 2017. Pretorius stated that the train was 'very full'. The statement did not refer to him being pushed from the train. It was put to the Plaintiff that he may not have been injured in a train incident. The Plaintiff denied this assertion. The Plaintiff contended that he did tell the police he was pushed out of the train. On a question posed by the Court, Plaintiff acknowledged that he did not see the assailants, and he could not say with certainty that he was pushed.

[7] The Plaintiff's mother, Natalie Pretorius, testified. The Plaintiff was brought home on the day of the accident by two men. They were working on a house close to the railway line when they saw the Plaintiff 'fly' out of the train.

They ran to his assistance and took him home. They were left to return to their jobs without any opportunity to obtain their details. The Plaintiff was bleeding from his head. Under cross-examination, the mother explained that the Plaintiff could not remember anything after he was brought home. She called the Plaintiff's father, and they took him to the hospital.

[8] The Plaintiff's father, Reginald Pretorius, a school principal, also testified. The Plaintiff told him about a few days after the incident that he was pushed or kicked out of the train. He confirmed that men working near the railway line brought the Plaintiff home and that he took the Plaintiff to the hospital. He was cross-examined on the train tickets, the condition he found the Plaintiff in when he arrived at home, and the conveyance of the Plaintiff to the hospital.

[9] The Plaintiff closed his case. The Defendant followed suit without calling any witnesses.

[10] The Plaintiff's claim, as particularised on 25 June 2018, states that the doors of the coach in which he was travelling remained open after the train departed Kuils River station. On the way to Blackheath station, the Plaintiff was approached by assailants who demanded his cellphone. Plaintiff was thereafter pushed off the moving train through the open doors of the coach. Plaintiff alleged that the Defendant had a legal duty to him to take reasonable steps to ensure his safety while travelling on one of their trains. The legal duty thus imposed required the Defendant, among others, to provide security on the train and to ensure that the carriage doors are closed when its trains depart from the stations. Plaintiff contended that the Defendant was negligent as it failed to take these steps.

[11] Defendant denied, among others, that the Plaintiff was a fare-paying passenger, that it failed to discharge its legal duty, or that it was negligent. In a request for trial particulars, which is referred to solely to understand the issues in this case, Defendant enquired about whether Plaintiff had a valid train ticket, the open doors and Plaintiff's proximity to them, the number of commuters on the train, the number of assailants, and the manner of his exit from the train. In his reply, Plaintiff indicated that there were two assailants, the train was overcrowded, and he was pushed from the train. It suffices to say that the Defendant did not raise a plea of contributory negligence or voluntary assumption of risk or fully pursue the requirements, or raise them at all, during cross-examination.

[12] In the opening paragraphs of its written submissions, the Defendant argued that the Plaintiff's version of events is untenable. Defendant speaks of plausible alternative scenarios of how the Plaintiff was injured, e.g., that he fell due to his own misfortune or was pushed in a criminal incident unrelated to any omission on the part of the Defendant. The Defendant contended that it was not obliged to call witnesses merely to confirm facts already evident from the record when those facts were never credibly placed in doubt by the Plaintiff. The Defendant asserts that the Plaintiff's account of the incident has fluctuated significantly over time, calling its reliability into question. The Defendant questioned whether the Plaintiff had an accidental fall or whether assailants pushed him, and whether the doors were open or closed. The Defendant contended that the Plaintiff's version of a violent ejection from the train was embellished, the nature and timing of his injuries and his level of consciousness were exaggerated to make it seem more serious, and that the Plaintiff presented misleading photographic evidence relating to the interior of the train. The tenor of the Defendant's written argument followed the same pattern, i.e. it pursued

arguments and raised contentions that were either never put to the Plaintiff or raised superficially and not pursued with any vigour during cross-examination.

EVALUATION

[13] The Court is obliged to comment on the content of the Defendant's voluminous written argument, given the scale of the problems evident in it. Submissions are not evidence. A party may not introduce new factual allegations in argument or rely upon 'plausible' scenarios that were never put to the Plaintiff and his witnesses. The Defendant cannot attack the credibility of the Plaintiff on grounds never canvassed in cross-examination or rely on speculation unsupported by evidence. Advancing plausible scenarios in argument is impermissible. The Defendant chose to close its case without calling any of a range of witnesses at its disposal, including the train driver, the station or train guard, a security officer, a medical expert, or any witness at all. It cannot fill these gaps with conjecture. If a Defendant leads no evidence, the Plaintiff's version has to be accepted unless it is so improbable that it cannot be believed. Defendant went to unacceptable lengths to rely upon the content of its occurrence report and a non-existent J88 report. All these submissions, including the Defendant's attempt to justify why it did not call any witnesses, are improper and untenable. Given the limited scope of the Defendant's cross-examination, the Court will not detain itself unnecessarily in repeating the Defendant's submissions that have no merit.

[14] The Defendant pleaded that the Plaintiff was not a fare-paying passenger. The Plaintiff produced two valid tickets covering the period in question, and testified that he used monthly and weekly tickets for his commute. Although the Plaintiff was uncertain about the precise price and point of purchase, these minor discrepancies do not outweigh the objective documentary evidence. The

Defendant did suggest in cross-examination that these were not the tickets the Plaintiff used. The Plaintiff asserted that it was. The Defendant led no evidence to challenge the authenticity or validity of the tickets. The Plaintiff alleged in his particulars of claim that the Defendant's legal duty towards him as a commuter on a public rail carrier arose from statute and public law principles.

[15] The claim was founded in delict and not contract. This means that the Defendant's legal duty towards the Plaintiff does not depend on the existence of a contractual relationship. Even if the Plaintiff had not been a fare-paying passenger, the Defendant would nonetheless owe him a duty to operate the train safely and to take reasonable steps to prevent foreseeable harm. The issue of fare payment, therefore, does not affect the Defendant's liability in delict.

[16] The Plaintiff's account of how he fell from the moving train is the core enquiry as to whether the Defendant had a legal duty towards him, whether it breached that duty when the train departed with open carriage doors, and whether the breach caused the harm. The Defendant's reliance upon the secondary issues and purported inconsistencies in the Plaintiff's level of consciousness after the fall, how he got home, who bought his tickets, whether he travelled daily to work by train, and his parents' recollection of events relating to how he got to the hospital, do not bear on any of the delictual enquiries relevant to this case. These are peripheral matters as the Plaintiff correctly characterises them. Trauma and the efflux of time, among other factors, often lead to imperfect recollection of secondary details. The incident occurred eight years ago. Minor discrepancies are to be expected and do not detract from the reliability of a witness on the central issue.²

[17] While the Plaintiff testified about assailants robbing passengers of their cellphones, he did not present any evidence about the state of security on the

² *Stellenbosch Farmers' Winery Group Ltd v Martell & Cie SA* 2003 (1) SA 11 (SCA)

train. The Court has no record of the Plaintiff even being asked whether there was a security guard on the train or at the stations. The Court will therefore regard the allegation that the doors were open as the sole ground of alleged wrongfulness and negligence that can be attributable to the Defendant. The Plaintiff stated that he was pushed or kicked from the train. He relied upon the police docket, the hospital notes and his mother's testimony to support his account of how the incident occurred. The Defendant exposed at least one inconsistency between the Plaintiff's testimony and the content of the statement he made to the police. The Defendant did not challenge the content of the hospital notes.

[18] Although the Plaintiff's statement, made six days after the incident, does not refer to him being pushed or kicked off the train, the docket and hospital notes do. The docket and hospital notes record the mode of injury as being kicked or pushed off the moving train. The Plaintiff contends that these records corroborate the Plaintiff's evidence as pleaded in his particulars of claim. The entries are hearsay and do not constitute proof of how the Plaintiff fell. Its probative value is limited. It is, however, consistent with the Plaintiff's testimony in that the incident was reported as a push or kick at an early stage after the incident occurred. Consistency is relevant to credibility, but it is not corroboration. It is not independent evidence supported by the testimony of the person who made those entries.

[19] The Plaintiff's mother testified that two unidentified men brought the Plaintiff home after the incident and informed her that they had seen him 'fly' out of the train. This evidence is also hearsay and of limited probative value. The men were not identified, were not called as witnesses, and their observations were not tested in cross-examination. At most, it confirms that the Plaintiff fell from the moving train and was found injured near the railway line.

It does not corroborate the Plaintiff's account of being pushed or forced from the train.

[20] The Defendant did not object to either piece of evidence, and their admissibility is not in question. The Plaintiff referred to his account of how the incident occurred in the incident report compiled by the Defendant eight years after the incident. The content of the incident report cannot corroborate the Plaintiff's version, nor can it be relied upon to draw any factual inferences.

[21] The Plaintiff is the only direct witness to what occurred inside the train. The Defendant, apart from suggesting that the Plaintiff may have sustained his injuries in another manner, did not lead any evidence or put up an alternate version. In response to a question from the Court, the Plaintiff testified that he had neither seen the assailants nor seen them pushing him. The same enquiry applies to the issue of the open doors while the train was in motion. The Plaintiff was the only witness who was inside the train. The Defendant did not lead any evidence to contradict this account or provide an alternate version. The Plaintiff's version that he was pushed out of the train by force is credible. It is consistent with the docket entry and hospital notes made at an early stage after the incident occurred and is inherently probable. There are many case reports of persons being robbed and pushed out of trains in this country. The omission from the police statement of how he fell off the train does not render his testimony unreliable.

[22] The Defendant is a public carrier that owes a legal duty to its passengers to ensure that reasonable measures are in place to provide for the safety of rail commuters and protect them from suffering physical harm while using its transport services.³ The duty stems from the contract between itself and its

³ *Rail Commuters Action Group v Transnet Ltd t/a Metrorail* (CCT 56/03) [2004] ZACC 20; 2005 (2) SA 359 (CC); 2005 (4) BCLR 301 (CC) (26 November 2004) ('*Metrorail*')

passengers or its public law obligations. A breach of that duty is wrongful in the delictual sense and could attract liability for damages.⁴ In *Mashongwa*, the Constitutional Court clarified that PRASA's public-law duty to protect commuters, as recognised in *Metrorail*, has evolved into a private-law duty for purposes of the delictual wrongfulness enquiry. Before *Mashongwa*, the analysis of wrongfulness entailed an enquiry as to whether the Defendant owed a legal duty to prevent harm and whether public policy and constitutional values would support imposing liability. After *Mashongwa*, the enquiry in public rail delictual cases is simplified. If the Defendant operates a public transport system carrying commuters, it owes a private law duty to take reasonable steps to protect commuters from foreseeable harm. *Mashongwa* constitutionalised the duty but did not create a new cause of action or abolish the common law test.

[23] In this matter, once it is accepted that the train was operated with open doors while in motion, the Defendant's conduct falls within the scope of the private-law duty articulated in *Mashongwa*. The Court is satisfied that the Plaintiff has discharged the onus of proving that he was pushed during a robbery attempt from a carriage of a train travelling with open doors. Since the Plaintiff has discharged the burden to prove that the carriage doors were open when the train was moving, the Court finds that the Defendant acted wrongfully in the circumstances.

[24] A train in motion with open doors exposes passengers to a foreseeable and unreasonable risk of harm. A reasonable rail operator would have foreseen the risk of passengers falling or being pushed from the train and would have taken steps to prevent such harm by ensuring that the doors were closed. The Defendant, as an organ of state, was obliged to present evidence to the Court to

4 *Mashongwa v PRASA* (CCT03/15) [2015] ZACC 36; 2016 (2) BCLR 204 (CC); 2016 (3) SA 528 (CC) (26 November 2015) ('*Mashongwa*') at paras 18-20, *Mketo v Passenger Rail Agency of South Africa (Appeal)* ('*Mketo*') (13636/2020) [2025] ZAWCHC 65 (24 February 2025) at paras 46-51

enable it to assess the reasonableness of the steps taken to ensure that the doors of the carriage were closed once the train was in motion.⁵

[25] The Plaintiff testified that the doors of the carriage opposite those closest to the platform remained open after the train had left Bellville station. Caselaw dealing with alleged negligence on the part of the public rail carrier underscores the need to keep coach doors closed.⁶ Defendant's Counsel merely confirmed the Plaintiff's evidence about the open train doors and provided no countervailing evidence or suggestions as to how the Plaintiff could have avoided being pushed out of the train. The Court finds that the Defendant, as an organ of state, failed to take reasonable steps to keep the doors of the carriage that the Plaintiff was travelling in closed, and was therefore negligent.

[26] But for the Defendant's negligence, the Plaintiff would not have fallen from the train when he was pushed. The harm he suffered is the kind of harm that the legal duty imposed upon the Defendant is intended to prevent. Both factual and legal causation are accordingly established.⁷

[27] In the premises, the Plaintiff has established that the Defendant is liable for the damages that he has yet to prove. The Plaintiff sought party and party costs and Counsel's fees on scale C. The legal principles relating to public rail carrier liability are now well established, and this case did not pose any unusual

⁵ *Kruger v Coetzee* 1966 (2) SA 428 at 430E-F: For the purposes of liability culpa arises if— (a) a diligens paterfamilias in the position of the defendant— (i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and (ii) would take reasonable steps to guard against such occurrence; and (b) the defendant failed to take such steps."

⁶ *Metrorail*, supra, at paras 84,102,106, *Mketo* at para 54, *Chauke v Passenger Rail Agency of South Africa* (8394/13) [2015] ZAGPPHC 1075 (9/12/2015)

⁷ The test for factual and legal causation. *International Shipping Co (Pty) Ltd v Bentley* 1990 (1) SA 680 (A) at 700 E-H, *Za v Smith and Another* (20134/2014) [2015] ZASCA 75; 2015 (4) SA 574 (SCA); [2015] 3 All SA 288 (SCA) (27 May 2015), As the apex Court reasoned in *Mashongwa*, the negligent conduct of leaving the doors open is closely connected to the harm suffered. The apex Court found that legal causation had been established, and it was reasonable, fair, and just that liability be imputed to the Respondent.

difficulties. The Court is not convinced that it should award Counsel's fees on scale C.

ORDER

3. The Defendant is liable for the yet to be proven damages suffered by the Plaintiff while travelling on the Defendant's train on 28 September 2017.
4. The Defendant shall pay the Plaintiff's party and party costs and Counsel's fees on scale B.

BHOOPCHAND AJ

Acting judge

High Court

Western Cape Division

Judgment was handed down and delivered to the parties by e-mail on 17 February
2026

Plaintiff's Counsel: Advocate R Liddell
Instructed by: DSC Attorneys
Respondent's Counsel: Advocate T Ramatsekisa
Instructed by: Crafford Attorneys, Pretoria