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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case number: 96220/16

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE 17/2/2026

SIGNATURE

In the matter between:

DIMAKATSO RACHEL TSWAYI

Plaintiff

and

THE PASSENGER RAIL AGENCY OF SOUTH AFRICA

Defendant

JUDGMENT

PIENAAR M (AJ)

1. Ms Dimakatso Rachel Tswayi, claims delictual damages for harm she suffered after being pushed out of the open door of a moving train. In respect of merits/liability the parties conveyed to the Court at the commencement of proceedings that the Defendant offered to pay the Plaintiff 90% of proven or agreed damages. The

Plaintiff, however, believes that the Defendant is 100% liable and therefore did not accept the Defendant's offer. Therefore, the issue of liability remains in dispute and was argued between the parties. Both parties agreed that the matter may proceed by way of affidavits in terms of Rule 38(2) of the Uniform Rules. The court accordingly granted an application in terms of Rule 38(2).

2. When the matter commenced on the day of the hearing, 18 November 2025, the court allowed the matter to stand down until 12:00 to enable the parties to communicate. When proceedings resumed at 12:00, the defendant's counsel submitted that they had an offer of 90% with regard to merits, and provided instructions for quantum as follows: General Damages R550,000, Loss of Earnings R2,000,000, and the amount for future medical treatment as claimed in the particulars of claim. The plaintiff's counsel submitted that they accepted the amounts for General Damages and Loss of Earnings, but that future medical treatment must be postponed sine die.

3. The issue of liability turns on the element of negligence. The negligence, as pleaded, is that the defendant ("PRASA") operated a train with its doors open or were forcibly kept open when the train departed from the Devilish station, allowing the plaintiff to be pushed out of the train. The sole controversy in this case is whether Ms Tswayi has shown that PRASA acted negligently.

4. Ms Tswayi case is that she was pushed out of the open doors of a moving train.

5. The plaintiff's statement to the SAPS reads as follows: "On 17 April 2015 at Devnish train station I was from school to my resident place using a train. I was busy talking on my phone when an unknown African male grab my phone and he manage to jump out of the moving train with my phone. I stood up where I was sitting went to the door while the other people was also standing then another African man pushed me from behind from the train door and I fell on the platform"

6. PRASA submitted that they does not deny that it has a duty to keep coach doors closed when a train is in motion. However, the plaintiff placed herself in harm's way by

firstly trying to apprehend the robber secondly by standing up and placing herself in front of an open door which was deliberately held not to close by an unknown person.

7. From the Plea, the Defendant pleads that in particular, denies that the cause of this incident was due to the sole negligence of the Defendant nor was it caused due to the negligence of its permanent or temporal employees or any of its agents, the Defendant avers that the alleged duty of care owed to the Plaintiff as alleged in this particulars of claims was never breached that the sole cause of the incident was the Plaintiff's exclusive negligence in one or more or all off the following:

7.1 she failed to avoid the incident where, by the exercise of reasonable care, she could have done so; and

7.2 she failed to keep a proper look out.

8. The test to determine delictual liability is trite. It involves, depending on the particular circumstances of each case, the questions whether (a) a reasonable person in the defendant's position would foresee a reasonable possibility of his or her conduct causing harm resulting in patrimonial loss to another; (b) would take reasonable steps to avert the risk of such harm and (c) the defendant failed to take such steps.

9. I find that the defendant failed to take reasonable steps to avert the risk, in that it failed to ensure that the train doors can close. The reasonable man will foreseen the possibility of injury or death if a person fell out or were pushed out the door on the far side and fell onto the ground, and this would be the case irrespective of whether the train was in motion or not. There can be no doubt that leaving the train doors open is a danger to commuters who board that train, as he/she could slip, be pushed, lose their balance, fall from the train, and sustain injury.

10. The Constitutional Court found that PRASA's failure to ensure the train doors were closed gave rise to negligence due to the risk involved and PRASA's duties to commuters.

11. In the premises, I find that the defendant ought to have foreseen that allowing a train to move with its doors open might lead to a commuter falling and getting injured. Furthermore, the plaintiff falling off the train (after being pushed) and sustaining injuries was due to the failure of the defendant to take steps to guard against this.

12. It was held in *Transnet Ltd t/a Metro Rail v Tshabala* [1] that:

“A reasonable man in the position of the defendant would not have allowed the train to operate with the doors of the coaches open as he would have foreseen that to leave the doors of the railway coaches open would constitute an invitation to prospective passengers to board the train while moving that it would be dangerous for them to do so”

13. In casu, the plaintiff was pushed by other commuters while she was already standing inside the train securing herself. She did not attempt to board a moving train.

14. Having considered the relevant facts on this case as set out above, I find that the defendant was negligent and that there was no contributory negligence from the plaintiff. The plaintiff is entitled to recover from the defendant 100% of her proven damages.

Quantum

15. At the hearing of the trial, both parties informed the court that the issue of past and future loss of earnings had been settled in the amount of two million rand. The plaintiff also accepted the offer of R550 000.00 for general damages. The issue of future medical expenses or treatment was *postponed sine die*. The reason for the postponement of this issue is that, according to the particulars of claim, an amount of R50 000.00 was claimed, and the plaintiff must amend the claim accordingly.

As a result, the following order is granted:

1. The defendant is liable for 100% of the plaintiff's proven or agreed damages.

2. The defendant shall pay the plaintiff R2 550 000,00, within 30 days from the date of this court order, which amounts has been made up as follows:

2.1 R550 000,00 in respect of General Damages

2.2 R2 000 000,00 in respect of loss of earnings/earning capacity, as delictual damages

3. In the event of the aforesaid amount not being paid timeously, the Defendant shall be liable for interest on the amount at the rate of 11,25% per annum calculated from the 31st day to date of payment.

4. The defendant shall pay the Plaintiff's taxed or agreed party and party costs on the High Court scale, and the discretion of the taxing master, which includes the following:

4.1 Medico legal reports, addendum reports and radiological reports served on the Defendant;

4.2 The costs of Adv J van der Merwe, on the Senior-Junior scale, and on scale B, including preparation fees, heads of argument, day fee for 18 November 2025, settlement proposals, consulting with the plaintiff, drafting of relevant documents.

4.3 The costs of all reasonable traveling expenses (if any);

4.4 The costs to compiling all minutes in respect of pre trial conferences, including counsel's charges;

4.5 the costs of preparing bundles (if any);

5. In the event that the costs are not agreed:

5.1 The Plaintiff shall serve a notice of taxation on the Defendant and/or the Defendant's attorney of record;

5.2 The Plaintiff shall allow the Defendant 14 (fourteen) days from the date of allocator to make payment of the taxed costs;

5.3 Should payment not be affected timeously, the Plaintiff will be entitled to recover interest at the prevailing rate of interest, from 31 days after date of the signed allocator, on the taxed or agreed costs, to date of final payment.

6. The amounts referred to in the above paragraphs will be paid to the Plaintiff's Attorneys, Gert Nel Incorporated, by direct transfer into their trust account, details of which are the following:

Name : Gert Nel Attorneys

Bank :Bank

Account number :

Branch code : 3[...]

Reference : G[...]

7. The issue of future medical expenses is *postponed sine die*

8. It is recorded that there is a contingency fee agreement.

M PIENAAR
Acting Judge of the High Court
Gauteng division, Pretoria

Date of hearing : 18 November 2025

Date of judgment : 18 February 2026

This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

Appearances

Counsel for the plaintiff : Adv J van der Merwe

Instructed by : Gert Nel Inc

Counsel for the defendant : Adv N Nharmuravate

[1] [2006] 2 ALL SA 583 (SCA) at para 9