



**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 96219/16

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES/NO
- (2) OF INTEREST TO OTHERS JUDGES: YES/NO
- (3) REVISED

11. 2. 2026

DATE

SIGNATURE

In the matter between:

PAUL VAN DER BERG

PLAINTIFF

and

PRASA

DEFENDANT

This Judgment is herein duly stamped by the Registrar of the Court and is submitted electronically to the Parties/their legal representatives by e-mail. The Judgment is further uploaded to the electronic file of this matter on Caselines. The date of this Judgment is deemed to be February 2026.

JUDGMENT

BEFORE: MAKAMU J

Introduction

[1] This is an action for damages instituted by the plaintiff, Mr. Paul van der Berg, against the defendant, the Passenger Rail Agency of South Africa (PRASA), arising from an incident on 5 May 2016. The plaintiff claims that he was pushed from a moving train by other commuters through open doors, resulting in bodily injuries. The plaintiff alleges negligence and breach of legal duty by the defendant. The defendant disputes the claim, contending that the plaintiff's version is improbable, contradictory, and not proven on a balance of probabilities.

[2] The trial proceeded with the plaintiff testifying and calling one witness, Ms. Precious Tshite. The defendant applied for absolution from the instance at the close of the plaintiff's case, which was dismissed. The defendant then led the evidence of one witness, Mr. Bezuidenhout, an investigator.

The Parties and common cause facts

[3] It is common cause that:

3.1 On 5 May 2016, the plaintiff was a commuter on a Metrorail train operated by the defendant, travelling from Braamfontein to Krugersdorp.

3.2 The plaintiff held a valid monthly ticket (No. M052016) for such travel.

3.3 The defendant, as a public rail utility, owed commuters a duty of care.

The Plaintiffs version

[4] The plaintiff testified that on the day in question, he boarded a crowded train and the doors were 70% open. As the train approached Krugersdorp Station, the doors of his coach were still open. He was pushed by other commuters through the open doors while the train was still moving, causing him to fall onto the platform. He sustained facial lacerations, dental injuries, hand lacerations, a concussion, and a lower back injury. He lost consciousness briefly, was assisted by strangers, and walked approximately one kilometre to a hospital.

[5] Ms. Precious Tshite, a regular commuter acquainted with the plaintiff, confirmed that she saw him a week after the incident. She testified that he appeared injured and that they later went to a police station to report the matter. The matter was reported to the police station on the 18th of May 2016, where they both deposed of an affidavit pertaining to the incident.

The Defendants case

[6] The defendant's case, as presented in its heads of argument and through Mr. Bezuidenhout, is that the plaintiff's account is riddled with improbabilities and inconsistencies. The defendant highlights:

6.1 Inconsistencies in the plaintiff's description of the train's occupancy.

6.2 The improbability of walking a kilometer to the hospital after an alleged loss of consciousness and significant injury.

6.3 The failure of Ms. Tshite to inquire about the plaintiff's well-being immediately upon seeing him.

6.4 The plaintiff's failure to report the incident immediately to PRASA officials or via the helpline number on his ticket.

6.5 The absence of any record of the incident in the Occurrence Book (OB) maintained by security personnel at Krugersdorp Station.

6.6 The defendant disputes the admissibility of the hospital records as hearsay.

Absolution from the instance

[7] The defense made an application for absolution from the instance based on the plaintiff's evidence. They placed it on record that the evidence given by the plaintiff has irreconcilable differences and improbabilities. I maintain that the differences in the evidence given by Ms. Thite and the plaintiff are immaterial as long as there is evidence to prove that the plaintiff was indeed a passenger on the train with a monthly ticket, he was seen by Ms. Thite on and outside the train, he has hospital records and a police affidavit. In *Ndlovu v MEC for*

*Police, Roads and Transport Free State Province and Others*¹, the court clarified the test of absolution from the instance when it said:

“This test requires of the presiding officer to consider the proven facts and to determine if it amounts to a prima facie case. Absolution from the instance will ordinarily be granted sparingly and the court could draw inference for which the plaintiff contends”

It is for these very reasons that defendants application for absolution from the instance was dismissed.

Assessment of evidence and credibility

[7] I have carefully considered the evidence presented by both parties. While the defendant has pointed to several discrepancies in the plaintiff’s narrative, I am not persuaded that these discrepancies are so fundamental as to render the plaintiff’s entire version implausible or false.

7.1 On Contradictions: The plaintiff’s minor variations in describing the train’s crowding are not unusual for a witness recalling a traumatic event years later. They do not go to the heart of the claim—namely, whether he was pushed from a moving train. It also proves that the witness and the Plaintiff did not rehearse the events to tailor it for the purpose but relied on their recollection of what happened

7.2 On Failure to Report: The plaintiff’s explanation that he was disoriented, in pain, and focused on seeking medical help is reasonable. The obligation to report is not a prerequisite for a valid claim, and his failure to do so immediately does not prove that the incident did not occur. It would not be expected that the Plaintiff in a state in which he was would go around looking for the authorities at the station to report the matter the first priority was to seek medical assistance.

7.3 On the Evidence of Ms.Tshite: Her conduct—greeting the plaintiff without immediate inquiry—is not so improbable as to discredit her entire testimony. People

¹ *Ndlovu v MEC for Police Roads and Transport Free State and others* 2024 JDR 3275, p3 at para 4

react differently to situations, and her subsequent assistance in reporting the matter lends support to the plaintiff's version. The Plaintiff and Ms. Tshite were not friends and there is no evidence of them exchanging pleasantries other than greeting when they saw one another in the train.

7.4 On the Defendant's Witness: Mr. Bezuidenhout was an honest witness, but his evidence was necessarily limited. He did not witness the incident. His testimony that the OB contained no record of the event is noted, but the absence of a record does not conclusively prove that the incident did not occur. Incidents can go unreported, especially in busy public transport environments. If the witness Mr. Bezuidenhout relied on the Occurrence Book which he did not author, then it could be regarded as hearsay evidence but the approach by both representatives to admit the records is acceptable.

7.5 On Hearsay and Hospital Records: The defendant correctly points out that the hospital records are hearsay. However, the plaintiff's own testimony, which I found credible in material respects, is sufficient to establish that he sustained injuries consistent with a fall. The hearsay objection does not negate the core of his viva voce evidence. If this evidence should be considered to be hearsay, then Mr. Bezuidenhout's evidence on Occurrence Book should be rejected as hearsay.

Legal duty and negligence

[13] The defendant, as a public carrier, bears a legal duty to take reasonable steps to ensure the safety of its passengers. This includes taking measures to prevent harm from fellow passengers and ensuring that train doors are not open while the train is in motion, creating a foreseeable risk of exactly the kind of injury suffered by the plaintiff. In *Saint v PRASA* [2025]², Manamela AJ stated:

"The question is, what is there for the plaintiff to do when a train is running with open doors and is overcrowded. I am of the view that if there is anyone to rectify this it would only be the defendant"

² *Saint v Passenger Rail Agency of South Africa* [2025] JOL 68841 (GP), p 9

[14] The evidence establishes, on a balance of probabilities, that the coach's doors were open as the train approached the station. The defendant led no evidence to rebut this specific allegation or to show that it had implemented reasonable systems (e.g., functioning door mechanisms, adequate security patrols, or effective monitoring) to prevent such a dangerous state of affairs. In *Maphela v PRASA*³, Pangarker AJ held:

“In my view, all that was required of the defendant was to comply with its own operating instructions. Yet, the defendant failed to do so and operated its train from Mutual to Nyanga stations with its carriage doors open, put another way, the defendant’s employees omitted to close the train doors, and such conduct is not acceptable. In allowing the train doors to be and remain open while the train was in motion, the defendant failed in its legal duty towards the plaintiff as a commuter. The resultant finding is that the defendant failed to ensure that the safety precaution (closing the train door) was complied with and such failure amounts to negligence on its part. A reasonable organ of state in the defendant’s position, which owes a public law duty to commuters, would have ensured that the train doors were kept closed to prevent the plaintiffs fall or slip from the train onto the railway tracks. Thus, the reasonable possibility of the plaintiff, a commuter, falling from the packet, moving train whilst the doors were open, was foreseeable.”

[15] The defendant’s negligence lies in its failure to take these reasonable steps. Its breach of duty was a direct cause of the plaintiff’s injuries, as it created hazardous conditions (open doors on a moving train), which enabled the push and the fall.

Contributory negligence

[16] The defendant pleaded contributory negligence, arguing that the plaintiff willfully boarded an overcrowded train. The plaintiff did admit the train was full. In the circumstances, I find that the plaintiff’s decision to board a crowded train does constitute some contributory fault, as it placed him in a more vulnerable position, however, the train he was set to board

³ *Maphela v Passenger Rail Agency of South Africa* [2023] JOL 59612 (WCC) at para 55

came late and it was the last train. He had no alternative transport as he is a daily train commuter.

Order

[17] In the result, I make the following order:

1. Judgment is granted in favour of the plaintiff, the defendant held to be 100% liable.
2. Costs in the cause.



M S MAKAMU

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Date of hearing: 02 February 2026

Judgment delivered: 11 February 2026

APPEARANCES:

For the Plaintiff: Adv JG Van Der Merwe

Instructed by: A Nortje

For the Defendant: Adv T Ramatsekisa

Instructed by: Mohala Moifo Attoreny's Inc