



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 72080/2019

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

03 MARCH 2026

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SIGNATURE

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DATE

In the matter between:

VK THOLE

Plaintiff

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA (PRASA)

Defendant

JUDGMENT

LABUSCHAGNE J

- [1] In this matter only the issue of liability served before the trial court, quantum having been separated in terms of rule 33(4) and postponed *sine die*.
- [2] The plaintiff instituted action against PRASA for injuries sustained in an incident on 29 September 2017 when he was ejected from a moving train travelling between Bosman Street and Mabopane Station in the region of Kopanong Station.
- [3] The plaintiff pleaded that on or about 29 September 2017 at approximately 19:30, between Labeleng Metro Rail Station, on route to Soshanguve Station, the plaintiff was a passenger on a moving train when co-passengers pushed the plaintiff out of the coach onto the tracks.
- [4] The plaintiff pleaded that the defendant breached its duty of care to ensure the safety of its passengers by permitting the train to be operated with open doors while being overcrowded.
- [5] The plaintiff pleaded the following injuries:
- 5.1 A fracture to the right humerus.
 - 5.2 Lacerations to hands and injuries to the hands.
 - 5.3 A deep scalp laceration.
 - 5.4 Four soft-tissue injuries.
 - 5.5 Deep lacerations to both knees.

5.6 Multiple facial bone fractures.

5.7 Injuries to his eyes.

5.8 Fractured patella.

[6] The defendant denied that the incident had occurred.

THE EVIDENCE

[7] The plaintiff testified that he resides in Mabopane and, at the time of the incident in 2017, was employed at Vasco. That is in the Silverton area. To get to work and back he would have to take a train from Mabopane Station to Bosman Street Station, where he would change trains and disembark at Eerste Fabrieke Station. It would then be a 45 minute walk to work. This was his daily routine.

[8] On the day in question, he had been at work until 16:30. It was payday and he travelled with a backpack in which he had placed his pay. He had a weekly ticket to travel on the train. He walked to Eerste Fabrieke and took a train to Bosman Street. At Bosman Street he took a train to Mabopane. The train schedule of the service offered by PRASA indicates that the most probable train that he took was the one that departed from Bosman Street at 19h12.

[9] It was a Friday and the train was filling up as it progressed. At Kopanong Station, the train was full. He was standing, holding onto an overhead strap. After the train had departed, the doors remained open. He was standing at the first door on the left of the carriage. A commotion started amongst

passengers and pushing and shoving taking place. He had the impression that he was going to be robbed. However, he was pushed from the train without his backpack. He fell, ostensibly on his knees as both patellae were fractured and he sustained a gash to his head and a severe injury to his eye. He described having to get up but having to carry his eye in his hand. His contention was that he would not have been ejected from the train had the doors been closed.

[10] The cross-examination of the plaintiff focussed on discrepancies as to the time and the location of the place where the alleged incident occurred. In the particulars of claim he contended that the incident took place at 19h30. In a statement to the Police, he contended that it was at 20h35.

[11] The evidence presented by the plaintiff, with use of photographs, as to where the incident occurred was tested in cross-examination and through the evidence of the defendant. The plaintiff contended that he, in his injured state, walked to an area where shacks were- where someone phoned his brother to come and collect him. Daylight photo's of the area in question showed no visible shacks or habitation near the tracks. The train driver and the Metro guard who travelled at the rear of the train were also called as witnesses. According to them there was no habitation or township in the area identified by the plaintiff. They testified that they were unaware of any incident that had taken place.

[12] The discrepancies in the evidence of the plaintiff, coupled with the fact that the defendant's witnesses did not see someone being pushed from the train,

and did not receive reports of such an incident, resulted in the contention that the incident did not occur at all.

[13] What was not disputed throughout the matter was the plaintiff's contention that the train was overcrowded and that the doors were open while the train was in motion.

[14] If the plaintiff's evidence is accepted (with which I deal below), then the fact that the train was overcrowded, and in motion with open doors, would establish negligence on the part of PRASA.

[15] The second witness for the plaintiff is the brother of the plaintiff. He testified that he was busy studying at home when he received a call from a stranger, advising that he had to come and fetch his brother who had been injured. He was directed by telephone to the settlement in question. He had not been there before but, when he eventually found his brother, he testified that it was within 400 metres of where the train tracks passed on the route between Bosman Street and Mabopane.

[16] The evidence of the second plaintiff's witness was not placed in dispute, other than with reference to the place where the incident occurred.

[17] The first defence witness was the driver of the train that departed from Bosman Steet on route to Mapobane at 19h12 on the day in question. He confirmed that it is a 1 hour train journey and that Kopanong Station is approximately 40 to 45 minutes into the journey. He is unaware of any incident, and none was reported to him.

- [18] The second defence witness was the Metro guard, whose duty was to ensure the safety of the passengers. She was in a cabin at the rear of the train and testified that she was unaware of anybody who had been pushed from the train. Importantly, she did not testify that, once the train had left any of the stations, that she had ensured that all train doors were closed before the train departed.
- [19] One must bear in mind that the incidents in question took place when it was dark. While the train had a headlight facing forward, the train driver would not have been in the best position to view such an incident. He was probably in the worst position, facing the tracks going forward.
- [20] The Metro guard (in a cabin right at the rear of the train) also had limited visibility and may very well have missed an incident as described by the plaintiff. The fact that the train was in motion with open doors would have imposed a more stringent duty on the Metro guard to be on the lookout, particularly if the doors were not capable of being closed. However, no such evidence was presented.
- [21] The only issue arising from the defendant's witnesses is whether the plaintiff had identified the correct spot where alleged he was pushed from the train. There is reason to doubt that he had identified the right spot. This, to my mind, is not destructive of his evidence as one must bear in mind that the incident took place in the dark, that he had fallen on his knees and had sustained serious injuries to his head, eyes, both knees and legs and that this may very

well have affected the quality of his observations as to where the incident occurred.

ANALYSIS

[22] The following considerations establish that the incident described by the plaintiff in fact took place:

22.1 It was a normal workday for the plaintiff and his only means of travel back home from work was by train. On the probabilities he was therefore on the train between Bosman Street and Mabopane on the day in question.

22.2 The fact that his brother was called to pick him up in an injured state not far from the tracks confirms that the plaintiff had been ejected from the train while being a passenger.

22.3 The fact that the plaintiff was ejected from the train is only possible if the doors were open whilst the train was in motion. This was uncontested.

[23] In the premises, despite having reservations as to the correctness of the spot identified by the plaintiff as where the incident occurred, I am satisfied on the probabilities that the incident did in fact take place and that he was injured in the manner described by the plaintiff.

- [24] The question arises whether the discrepancies raised by the defence as to the place of the incident at the time of the incident are destructive of the plaintiff's version. I don't think they do. The discrepancies were in statements in English while the plaintiff testified through an interpreter. His demeanour was appropriate and he conceded differences pointed out. But I have concerns regarding the plaintiff's understanding of English. The statements in question were all written in English without them having been read back to him. Although the witness statements themselves state that he understood the contents, this is not necessarily the truth. One of the statements referred to, filled in by the plaintiff's attorneys, alleged that he had been fatally injured. He confirmed this evidence as correct, thinking that it merely described serious injuries. This indicates to my mind that the accuracy of what is recorded in the statements is tainted by a language barrier. Despite the discrepancies I am satisfied that the incident took place.
- [25] In the premises, whilst the criticism of the plaintiff may have some validity, the overarching probabilities of the incident having occurred have been established. These arise not only from the plaintiff's evidence, but by the evidence of the second witness for the plaintiff and from the uncontested fact that the train was overcrowded and in motion with open doors.
- [26] PRASA is a public carrier with a duty to protect its passengers from physical injury while using the trains (*Mahlongwa v Passenger Rail Agency of South Africa* 2016 (3) SA 528 (CC)).

[27] Measures that must be taken to ensure the safety and security of passengers include the duty to ensure that trains are not overcrowded and that all train doors are closed when the train is in motion (see *Motloung v PRASA* 2019/13557) [2022] ZAGPJHC 331 (16 May 2022) per Strijdom AJ at paragraph [37].

[28] Based on the above authorities I am satisfied that the plaintiff has established negligence. The fact that the plaintiff sustained fractures of both patellae and to the head confirm that he had fallen on his knees after being ejected from the train. This is consistent with the manner in which he described the incident in question.

[29] I am therefore satisfied that the plaintiff has also established causation In *Minister of Safety and Security v Van Duivenboden* 2002 (6) SA 431 (SCA) the following was stated in paragraph [25]:

“The plaintiff is not required to establish the causal link with certainty, but only to establish that the wrongful conduct was probably a cause of the loss, which calls for a sensible retrospective analysis of what would probably have occurred, based upon the evidence and what can be expected to occur in the ordinary course of human affairs rather than an exercise in metaphysics.”

CONCLUSION

[30] I am satisfied that the plaintiff has established liability on the part of PRASA and make the following order:

1. The issue of merits and quantum having been separated in terms of rule 33(4), the defendant is found to be liable to the plaintiff for 100 percent of his proven or agreed damages sustained in the incident that occurred on 29 September 2017.

2. The defendant is to pay the plaintiff's taxed or agreed party and party costs, which costs shall include the costs of an interpreter and as far as counsel is concerned, shall be on Scale C.

[REDACTED]

LABUSCHAGNE J

JUDGE OF THE HIGH COURT

APPEARANCES:

COUNSEL FOR APPLICANT : ADV JORDAAN

INSTRUCTED BY : SPRUYT ATTORNEYS

COUNSEL FOR RESPONDENT: ADV MATIDZA

INSTRUCTED BY : LEDWABA MAZWAI INC