



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 2567/2024

In the matter between:

KEBUANABO CONSTANCE POPO

PLAINTIFF

and

INTERCAPE FERREIRA MAINLINER (PTY) LTD

DEFENDANT

Neutral citation: *Popo v Intercapre Ferreira Mainliner (Pty) Ltd* (2567/2024) [2026]
ZAFSHC 223 (27 March 2026)

Coram: DAFFUE J

Heard: 18, 19 November 2025 and 5 December 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 16h00 on 27 March 2026.

Summary: Delict – compartment door of bus became detached and fell on plaintiff during process of loading her bag into the luggage compartment – defendant admitted that the compartment door became detached, but denied liability – defendant presented no evidence to explain alleged reasons for detachment – plaintiff proved the required elements for delictual liability – defendant 100% liable for plaintiff's damages to be proven.

ORDER

- 1 The defendant is 100% liable for the plaintiff's damages to be proven.
 - 2 The defendant shall pay the plaintiff's costs of the merits trial, inclusive of the fees relating to the drafting of heads of argument.
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JUDGMENT

Daffue J

Introduction

[1] The issue to be investigated and adjudicated in this case is whether a female pensioner of Bloemfontein presented sufficient evidence for the court to find a bus company liable for the damages caused to her when the door of the luggage compartment of the bus, referred to as a 'flap', became detached and fell on her. The question to be answered is whether it is a case of *res perit domino* (damage rests where it falls), or whether the bus company must be held liable in delict as the lady avers.

The parties

[2] The plaintiff is Ms Kebuanabo Constance Popo, a 74-year-old female pensioner of Bloemfontein who was injured prior to boarding a bus on route to Pretoria. The defendant is Intercape Ferreira Mainliner (Pty) Ltd, a company in the business of delivering transport services to its passengers all over the Republic of South Africa.

The incident as pleaded and the defence thereto

[3] It is common cause that on 27 February 2023 at Bloemfontein, the plaintiff was about to board one of the defendant's buses on route to Pretoria. It is appropriate to quote paragraphs 5 and 6 of the particulars of claim and the defendant's response thereto. These two paragraphs read as follows:

'5. Whilst the Plaintiff was waiting for the luggage to be put in the luggage compartment, the

flap of the luggage compartment got detached from its position and fell on her, as a result she was struck on the back of her neck and shift area, thereby injuring her neck and shift area.

6. The fact that the flap got detached from its position was the direct result of the negligence of the bus porter, who was the employee of the defendant acting within the course and scope of his employment. He was negligent by failing to ensure that the flap was properly attached to its position to prevent it from falling on the plaintiff.'

[4] The defendant pleaded a lack of knowledge of the injuries sustained by the plaintiff, but admitted in paragraph 5.2 of the plea that the flap of the luggage compartment became detached. In amplification of its denial of the allegations in paragraph 6 of the particulars of claim, the defendant pleaded that '. . . the sole cause of the luggage compartment becoming detached was as a result of the sole negligence of the Plaintiff in that she grabbed the bar keeping the flap of the bus open, while standing under the flap, causing the flap to become detached at a time when she should have foreseen that holding on/grabbing the bar may have the effect of the support of the flap being taken away.'

 (Emphasis added.)

[5] In an alternative plea, the defendant pleaded that the plaintiff was aware of the risks of standing under the flap and the danger of grabbing the bar; consequently, she consented to be subjected to the risk of injury and in the premises, the defendant could not be held liable for any loss or damages suffered by her.

[6] I should mention that I requested clarity before the leading of evidence what the parties meant by 'detachment' of the flap. Both parties agreed that the 'flap' did not become completely detached and thus falling to the ground, but that it became unlatched or detached from its usual position when open and fell from that position downwards. The reference in the pleadings and evidence to a 'flap' is not proper English. The correct and better description is either 'luggage compartment door' or 'trunk lid', being the hinged opening covering a vehicle's cargo area. I shall henceforth refer to 'compartment door'.

Separation of issues

[7] Prior to the leading of evidence, I made an order by agreement in terms of rule 33(4) of the Uniform Rules of Court in terms whereof merits and quantum were separated on the basis that the disputed issues in paragraphs 1, 5 and 6 of the particulars of claim,

read with the corresponding paragraphs of the plea, be separated from the remainder of the disputes and these were to be adjudicated during the trial. The further issues in dispute pleaded in paragraphs 7 to 10 of the particulars of claim stood over for later adjudication if required.

Evaluation of the evidence, the parties' submissions and relevant authorities

[8] I referred to the principle, *res perit domino*, in the introductory paragraph. In adjudicating the plaintiff's claim I shall not ignore the warning of Harms, JA in *Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA*,¹ stating that the first principle of the law of delict is that everyone has to bear the loss they suffer and that Aquilian liability provides an exception to that rule. Related thereto is always the apprehension of boundless liability.

[9] A litigant who fails to adduce evidence about a fact in issue, whether by not giving evidence or by failing to call witnesses, runs the risk of the opponent's version being believed.² However, the fact that the one party fails to adduce evidence to contradict the other party's version does not necessarily mean that that version should be accepted. It will always depend on the probative strength of such version, *ie* whether it was strong enough to cast an evidentiary burden on the party failing to present evidence.

[10] Against this background, I shall weigh the probabilities as they arise from the evidence and the evidential material as well as the circumstances of the case. As held in *Maitland and Kensington Bus Co (Pty) Ltd v Jennings*,³ for judgment to be given for a plaintiff, the court must be satisfied that sufficient reliance can be placed on their story for there to exist a strong probability that such version is correct. In *Ocean Accident and Guarantee Corporation Ltd J v Koch*,⁴ it was held that the evidence presented by the burdened party must be such that the court can say that it is more probable than not, for the burden to be discharged.

[11] The five requisites for delictual liability are well-known. These are:

¹ *Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA* 2006 (1) SA 461 (SCA) para12.

² *Brand v Minister of Justice and Another* 1959 (4) SA 712 (A) at 715D-716H and the authorities referred to by Schmidt and Rademeyer, *The Law of Evidence* para 3.2.4.1.

³ *Maitland and Kensington Bus Co (Pty) Ltd v Jennings* 1940 CPD 489 at 492.

⁴ *Ocean Accident and Guarantee Corporation Ltd v Koch* 1963 (4) SA 147 (A) at 157D.

- (a) conduct of the defendant which can be in the form of a *commissio*, e.g. a voluntary human act, or an *omissio*, eg the failure to take a positive step to prevent damage to another where there was a legal duty to act;
- (b) wrongfulness of that conduct;
- (c) fault in the form of negligence (or intent);
- (d) harm suffered by the plaintiff; and
- (e) a causal connection between the harm and the defendant's conduct.

[12] The often-quoted dictum of Holmes JA in *Kruger v Coetzee*⁵ is worth repeating. I quote:

'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.

This has been constantly stated by this Court for some 50 years. Requirement (a)(ii) is sometimes overlooked. Whether a diligens paterfamilias in the position of the person concerned would take any guarding steps at all and, if so, what steps would be reasonable, must always depend upon the particular circumstances of each case. No hard and fast basis can be laid down. Hence the futility, in general, of seeking guidance from the facts and results of other cases.'

[13] I accept that undue demands should not be made on a public carrier such as the defendant. In *Le Roux and Others v Dey*,⁶ the Constitutional Court dealt with wrongfulness as a requirement for delictual liability as follows:

'In the more recent past our courts have come to recognise, however, that in the context of the law of delict: (a) the criterion of wrongfulness ultimately depends on a judicial determination of whether – assuming all the other elements of delictual liability to be present – it would be reasonable to impose liability on a defendant for the damages flowing from specific conduct; and (b) that the judicial determination of that reasonableness would in turn depend on considerations of public and legal policy in accordance with constitutional norms. Incidentally, to avoid confusion it should be borne in mind that, what is meant by reasonableness in the context of wrongfulness has nothing to do with the reasonableness of the defendant's conduct, but it concerns the reasonableness of imposing liability on the defendant for the harm resulting from that conduct.'

⁵ *Kruger v Coetzee* 1966 (2) SA 428 (AD) at 430E-G.

⁶ *Le Roux and Others v Dey* [2011] ZACC 4; 2011 (3) SA 274 (CC); 2011 (6) BCLR 577 (CC) para 122.

[14] Before I deal with the *viva voce* evidence, I record that the court was presented with three photographs, marked exhibits A1, A2 and A3 respectively, in support of the evidence as to the mechanism of the flap. Three videos were also presented into evidence and the relevant memory stick was handed in as exhibit B. These videos assisted in considering the mechanism of the compartment door.

[15] The plaintiff testified as the sole witness in her case. She bought a ticket to travel with one of the defendant's buses from Bloemfontein to Pretoria, which bus was scheduled to depart from Bloemfontein at 03h00 on 27 February 2023. Upon announcement that the bus was ready to leave, she went to the bus. She took her bag to the luggage compartment at the side of the bus. The compartment door thereof was open at the time. At that stage, an employee of the defendant, referred to by her as a gentleman, was inside the luggage compartment, assisting a passenger that had alighted from the bus to obtain her luggage. Although she referred to the gentleman as the bus porter, he was probably the co-driver of the bus. When it was her turn to be assisted, she took her bag with both hands and put it inside the compartment for the co-driver to store it at the correct place. At that stage, the compartment door fell from its upright position onto the back of her neck and shift area. She did not know what caused the door to fall as she was at that stage leaning towards the inside of the luggage compartment and not watching the door. She enquired about an occurrence book but was told that she could report the matter in Pretoria on arrival. In Pretoria, she was merely provided with a brochure containing contact details.

[16] The plaintiff referred to the other passenger, unknown to her, who was standing relatively close to her at a stage. She could not explain why this person was not injured as well. In my view, this should be seen in context. Much would depend on that person's height and distance from the plaintiff at the stage when the compartment door came down and/or whether she had just left the scene before then.

[17] Detailed cross-examination occurred in respect of who purchased the plaintiff's bus ticket and when. Also, how she approached the bus. It was put to her in cross-examination that the person referred to was not a porter, but a co-driver. She did not dispute it. The three photos accepted as exhibits A1, A2 and A3 were shown to her. On exhibit A3 a person's hand is depicted on a bar on the inside of the compartment door.

When questioned, she denied that she ever grabbed that bar. She insisted that she was hit by the compartment door and could not explain how this occurred. I reiterate that defendant's counsel expressly accepted during cross-examination that the plaintiff was hit by the compartment door and therefore, it was never denied that she was hit as testified. Counsel referred to exhibit A1 and mentioned that although two bars are depicted, she did not have any instructions which bar was allegedly grabbed at. I find this quite disturbing as I would have expected counsel to have consulted with the defendant's witness prior to cross-examination. On a question by the Court, the plaintiff presented a clear version: the employee inside the luggage compartment picked up the flap (compartment door) after she had been hit by it. The defendant failed to reject this version, either by putting it to the plaintiff that she was lying, or by presenting the employee's evidence to contradict the version.

[18] The plaintiff was cross-examined about her evidence in chief that she reported her injury to the bus driver who informed her to report the incident on arrival in Pretoria which she did. She even referred to WhatsApp messages between her and the defendant that were still on her phone. She was accused of failing to ensure that these were discovered. I got the impression that the defendant's counsel was on the verge of accusing her of lying, but she eventually submitted that the plaintiff's evidence in this regard was inadmissible. Again, counsel was not properly instructed, or the defendant tried to mislead the Court. It eventually turned out during the evidence of its own witness that the defendant was fully aware of the incident. I shall revert thereto.

[19] Once the plaintiff has closed her case, the defendant sought absolution from the instance which was opposed. I dismissed the application whereafter the defendant decided to call witnesses in defence.

[20] The defendant called Mr Fletcher Smythe. He is the defendant's inhouse tax and legal counsel and has been in that position since March 2020, *ie* before the incident occurred. He is responsible for all policies and litigation. In an endeavour to rely on the defence of voluntary assumption of risk, Mr Smythe referred to the defendant's alleged policy, dictating that passengers are not allowed to load and offload their own luggage. Clearly, there is absolutely no evidence that passengers were warned about this and/or that the plaintiff was instructed to keep away from the luggage compartment, either by

way of a written notice or *viva voce* instructions at the scene.

[21] Mr Smythe was ignorant of the luggage compartment of the particular bus and even stated that the door could only open to a height of 1.2 meters which according to him would mean that passengers would have to crunch and crawl underneath it in order to handle their luggage. During cross-examination he was referred to the three videos presented by the defendant on a memory stick which I accepted as exhibit B. He was not shown these videos before his evidence. Clearly, the video footage contradicts his evidence. When the compartment door is fully opened, the bottom part thereof is higher than the head of the male person depicted in the video. I shall revert to the video evidence hereunder. Mr Smythe testified that according to reports seen by him, the bus was examined in Cape Town before departure and also in Pretoria on arrival. It appeared from 'ticks' on the reports that the unidentified people responsible therefore were satisfied that the compartment door was in proper working condition. This hearsay evidence has no value in my view.

[22] Mr Smythe also testified that if an incident such as in this case appears on a trip, the driver has to report that. He confirmed that he came across the driver's report which stated that 'the compartment door fell on a passenger's shoulder, but that she was not injured.' The driver also reported that he was not able to say what happened as he was in the process of getting luggage from inside the luggage compartment. When asked in cross-examination about the availability of this report, he could not give any explanation and merely said that he was not an attorney. On his version, they handed 'everything' to the attorney and he could not explain why the report was not discovered. The more appropriate enquiry should be why the employee responsible for the report was not called to testify. I deal with negative inferences herein later.

[23] Mr George Michael de Lange was called as the defendant's second witness. He is employed by the defendant as a mechanic, stationed in Bloemfontein. He described the mechanism of the flap/compartment door with reference to exhibits A and B. He testified that the bar, referred to as an adjustment rod by him, is further from the ground when the compartment door is open than a normal person standing upright. This is apparent from the video footage.

[24] Mr De Lange explained that the compartment door worked with a hydraulic system. Two gas shocks are installed and because these are pressurised at eight bar per shock, the compartment door will stay open after it has been opened. I may mention that it is apparent from the video footage that the male person opening the compartment door assisted the door in moving upwards. Mr De Lange testified that the compartment door has to be pulled down manually with, in his words, 'a lot of force as the gas shocks are keeping it up.' I must say that I did not get the impression from the demonstrations in the video footage that a lot of force is needed to close the compartment door, although the person used his hand to guide the door downwards.

[25] Mr De Lange explained with reference to the photographs and video footage the positioning of the adjusting rod and gas shocks. He was adamant that if any of these items would be pulled or grabbed at, this would not cause the compartment door to come down from its open and vertical position. I may note that it is apparent from the video footage that when the compartment door is closed, a touch of the handle starts the opening process although the compartment door needs to be assisted manually in order to open completely. During the process of opening and closing, the compartment door swings in a semi-circle away from the bus. When fully opened, it is in a vertical position adjacent to the bus.

[26] No evidence was tendered that the plaintiff closed the door on top of her by pressing the handle or pulling anything such as the adjustment rod or gas shocks. Mr De Lange's evidence did not take the defendant's version any further insofar as he did not inspect the specific compartment door at any stage and could not say anything about the deficiency of the hydraulic system at the stage of the incident, save to advance his general comments in evidence. In any event, it is common cause that the compartment door became detached as admitted by the defendant in its plea. The pleaded reason provided was dealt a death blow by Mr De Lange, who categorically testified that nothing would happen to the compartment door if a person grabbed either the adjustment rod (bar) or gas shocks.

[27] The mere fact that the defendant failed to call a witness to deny that the plaintiff was injured because of the detachment of the compartment door and to give an explanation as to why it became detached, does not mean that the plaintiff's version

should be accepted as the truth and credible. It still needs to be considered, but it is unnecessary to try and find fault with her version in the absence of contradictory evidence.

[28] No reasons have been provided as to why the relevant employee, referred to as bus porter, co-driver or bus driver, was not called upon to testify. Consequently, a negative inference is justified against the defendant for failing to call the employee responsible for loading and offloading passengers' baggage. Clearly, such person would not deny that the compartment door fell on the plaintiff as this has been admitted. Such person should have been called to present an explanation for the door becoming detached as pleaded. The plaintiff did not have any reason to call such person and therefore, a negative inference shall not be drawn from her failure to call the employee. I refer to a not too dissimilar set of facts in *Raliphaswa v Mugivhi and Other*.⁷

[29] In the absence of evidence by the defendant as to what could have caused the compartment door to become detached, the matter may be considered by relying on the maxim, *res ipsa loquitur*. This Latin phrase is used to describe the proof of facts which are sufficient to support an inference that a defendant was negligent and thereby to establish a *prima facie* case against them. No presumption of law is created, but the court is allowed to draw a permissible and justified inference upon all the facts presented to it. The maxim is usually invoked in circumstances when the only known facts relating to negligence consist of the occurrence itself as again recorded in *Goliath v Member of the Executive Council for Health, Eastern Cape*.⁸ In *Arthur v Bezuidenhout and Mieny*⁹ the court reiterated that the maxim is no magic formula which does not alter the incidence of the onus or the rules of pleading. Consequently, *in casu* the onus remained on the plaintiff to prove her case.

[30] The case may also be considered based on circumstantial evidence. Unlike in a criminal case, the plaintiff does not have to prove that the inference she asks the court to draw is the only reasonable inference. It suffices to convince the court that the inference she relies upon is the most readily apparent and acceptable inference from several

⁷ *Raliphaswa v Mugivhi and Other* [2008] ZASCA 17; [2008] 3 All SA 92 (SCA); 2008 (4) SA 154 (SCA); see footnote 2: *Brand v Minister of Justice and Another* 1959 (4) SA 712 (A) at 715D-716H and the authorities referred to by Schmidt and Rademeyer, *The Law of Evidence* para 3.2.4.1; see also *Ferreira v Santam Insurance Co Ltd* 1995 (3) SA 287 (SE) 290H-J.

⁸ *Goliath v Member of the Executive Council for Health, Eastern Cape* [2014] ZASCA 182; 2015 (2) SA 97 (SCA) para 19.

⁹ *Arthur v Bezuidenhout and Mieny* 1962 (2) SA 566 (A) at 573C-E.

possible inferences, as stated in *AA Onderlinge Assuransie Assosiasie Bpk v De Beer*.¹⁰ More recently, the Supreme Court of Appeal considered circumstantial evidence in *Meyers v MEC Department of Health Eastern Cape*¹¹ (*Meyers*) and concluded that ‘in a civil case it is not necessary for a plaintiff to prove that the inference that she asks the court to draw is the only reasonable inference; it suffices for her to convince the court that the inference that she advocates is the most readily apparent and acceptable inference from a number of possible inferences.’ To take *Meyers* to its logical conclusion, if something goes wrong during a medical procedure as in that case, where there is *prima facie* negligence, it is for the defendant to disturb this *prima facie* inference of negligence.

[31] I accept that negligence is not established by merely showing that the incident occurred. As stated in *S v Van As*¹² the diligens *paterfamilias* does not have prophetic foresight. There is no credible evidence that the gas shocks were properly pressurised. It could not have been expected of the plaintiff to lead this evidence. The defendant was fully aware of the incident and in failing to present evidence in respect of the occurrence, it is a matter of *res ipsa loquitur*.

[32] The plaintiff’s testimony in respect of the fateful event stands uncontradicted and it is also credible. There is no reason to reject it as false or improbable. The compartment door came down on her when she stood underneath it while in the process of handing her bag to the bus porter/ co-driver, an employee of the defendant, who was inside the relevant luggage compartment. She denied grabbing the bar which allegedly kept the compartment door open. This mere allegation in the plea has not been supported by any *viva voce* evidence. Considering the plaintiff’s uncontested version, such pleaded version should be rejected. The defendant admitted in its plea that the compartment door became detached as understood by the parties with reference to what I stated above. Its own mechanic confirmed that the compartment door would not come down if someone would be grabbing the specific bar pointed out and apparently relied upon in the plea.

[33] The plaintiff was injured when the compartment door of the defendant’s bus came down from its open and vertical position and struck her on the back of her neck and shift.

¹⁰ *AA Onderlinge Assuransie Assosiasie Bpk v De Beer* 1982 (2) SA 603 (A) 614G-615B.

¹¹ *Meyers v MEC Department of Health Eastern Cape* [2020] ZASCA 3; [2020] 2 All SA 377 (SCA); 2020 (3) SA 337 (SCA) para 82.

¹² *S v Van As* 1976 (4) SA 594 (A) at 879D.

The question to be considered is whether her *viva voce* evidence is sufficient to establish her cause of action, bearing in mind that causation and harm stand over for later adjudication.

[34] I am satisfied that the defendant's employees were negligent in failing to ensure that the compartment door was properly kept in its open position and/or they failed to take reasonable steps to prevent the compartment door from falling onto the plaintiff. The defendant owed a duty to the public making use of its bus service, and the plaintiff in particular, to ensure their safety. It failed to do so. The plaintiff testified about her injuries and although quantum and causation stand over for later adjudication, I am satisfied that she has also shown that she had sustained injuries to her neck and shift. Having mentioned that causation stands over for later adjudication, it is recorded that the uncontested evidence shows that the 'but for' test in respect of factual causation has been met.¹³ The relevant elements of the claim based on delict have been proven.

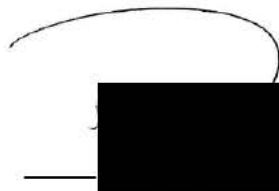
Conclusion

[35] I conclude that the plaintiff succeeds on the merits of her delictual claim. She has proven the required requisites on a balance of probabilities. A costs order in her favour should follow.

Order

[36] The following order is granted:

- 1 The defendant is 100% liable for the plaintiff's damages to be proven.
- 2 The defendant shall pay the plaintiff's costs of the merits trial, inclusive of the fees relating to the drafting of heads of argument.


J P DAFFUE
JUDGE OF THE HIGH COURT

¹³ *International Shipping Company (Pty) Ltd v Bentley* [1989] ZASCA 138; 1990 (1) SA 680 (A) at 700E-H.

Appearances

For the Plaintiff:

NW Phalatsi

Instructed by:

NW Phalatsi & Partners, Bloemfontein.

For the Defendant:

J Ferreira

Instructed by:

Phatshoane Henney, Bloemfontein.