



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

- (1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED.

SIGNATURE

DATE: 12 May 2026

Case No. A2024-122198

In the matter between:

MBM

Appellant

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Respondent

CORAM: WILSON J and WENTZEL J

JUDGMENT

WILSON J (with whom WENTZEL J agrees):

- 1 The appellant, MBM, appeals against the dismissal of her dependants' action for damages arising from the death of her husband, NJL, on 23 October 2018. NJL was found dead on the train tracks leading to Germiston between the Webber and Parkhill stations.

Proceedings in the Regional Court

- 2 No evidence was led on MBM's behalf from anyone who saw NJL fall from the train. Nor was any other direct evidence presented, by either MBM or the respondent, PRASA, of how NJL met his death. Nevertheless, MBM's case at trial was that, at the time of the incident, everyone, including PRASA's security commander called to the scene at which NJL's body was discovered, assumed that NJL had fallen from a train and died from the injuries he sustained during the fall. The route from Katlehong to Germiston was NJL's ordinary commuter route. MBM gave evidence that NJL left for work from the home they shared in Katlehong as usual that morning, and that, as usual, he intended to take the train from Kwesine, a station in Katlehong, to Germiston.
- 3 All the circumstances pointed to NJL having been killed by his exit from the train while it was travelling between stations. Because PRASA is under a duty of care to the general public using its commuter trains to ensure that the doors on its trains are closed and locked while the train is moving, the natural and probable inference from these facts was that a door had been left open, and NJL had fallen out of it. On any reasonable analysis of the facts, it was submitted, PRASA caused NJL's death because it failed to secure the train NJL had boarded.
- 4 However, the Regional Court held that it could not reach this conclusion, because no evidence had been led before it of exactly how NJL exited the train. Relying on a decision the Regional Court attributed to the Supreme Court of Appeal (which it cited as *Malatjie v Passenger Rail Agency of South Africa* [2015] JOL33061 (SCA)), the Regional Court held that, because no

evidence had been led of how NJL fell from the train, PRASA could not be held liable for his death.

5 The two main flaws in the Regional Court's decision are that the authority on which it relied does not exist, and the principle said to have been developed in that authority is at odds with our existing law of negligence. As far as I can see, the Supreme Court of Appeal did not give judgment in a case known as *Malatjie v Passenger Rail Agency of South Africa* in 2015, or at any other time I have been able to locate. Neither party in this appeal relied on such a decision, although they did refer to a case decided in this court under the same name.

6 The reference given by the Regional Court turns up a case known as *Yende v Passenger Rail Agency of South Africa* [2015] ZASCA 49 (27 March 2015), but that decision is not authority for the proposition that a plaintiff must always lead direct evidence of exactly how a delict occurs, and that delictual damages cannot be granted without such evidence. Nor is that proposition supported in *Malatjie v Passenger Rail Agency of South Africa* [2012] ZAGPPHC 60 (20 April 2012), to which the parties in this case actually referred us. Both decisions resolved competing accounts of how a particular accident happened. This case is quite different. Neither party has put up a version of how the accident happened, and we must draw inferences from the circumstances surrounding the accident.

7 The correct legal position is that a person who claims damages in delict need not show exactly how the damage-causing event happened if the circumstances surrounding the event speak for themselves. If the

circumstances surrounding the incident suggest that it would probably not have occurred without the negligence attributed to the defendant, then, in the absence of contrary indication, the negligence of the defendant may be inferred (see *Mostert v City of Cape Town* 2001 (1) SA 105 (SCA), paragraph 40). This approach is summed up in the Latin phrase *res ipsa loquitur* (roughly, “the thing speaks for itself”). The question in each case is whether, on all the admissible facts, the inference of negligence should be drawn from the surrounding circumstances.

The appeal

- 8 It is on the basis of this doctrine that Mr. Snoyman, who appeared for MBM, urged us to conclude that NJL fell to his death from a door negligently left unsecured by PRASA. In that event, Mr. Snoyman submitted, PRASA had to be held liable for NJL’s death.
- 9 I am satisfied that the Regional Court’s decision cannot be supported, because it applied the wrong test to reach the outcome it did. We are accordingly at liberty to re-examine the evidence ourselves. If, on that evidence, the only probable inference is that NJL fell to his death through a door left unsecured, then it seems to me that PRASA must be held liable.
- 10 It is well-established that PRASA is negligent if it fails to secure the doors of one of its train cars, irrespective of whether an injury results from a fall or a push from the moving train. A reasonable person in PRASA’s position foresees the harm that might ensue if its train doors are left unsecured while the train is moving. It does not matter exactly how the harm ensues. The harm is the foreseeable result of PRASA’s failure to secure its train doors. I think it

follows equally that the failure to secure the train doors would, factually, have caused NJL's death. Had the train doors been secured, NJL probably could not have fallen from the train, and the failure to secure the doors is sufficiently closely linked to NJL's death to have caused it in the legal sense (see *Mashongwa v PRASA* 2016 (3) SA 528 (CC) paragraphs 60 to 69).

11 The only real factual question in this case is, therefore, whether NJL was on the train to Germiston before he fell. On a proper analysis of the pleadings, that fact is undisputed. At paragraph 5 of her original particulars of claim, MBM avers that on "23rd of October 2018 and at or between Webber Train Station and Parkhill Train Station, Germiston, the deceased fell from a moving train while possessing a valid train ticket, and while the train was in motion, and sustained fatal injuries." Initially, PRASA pleaded a bare denial to that allegation.

12 On 19 May 2023, MBM amended paragraph 5 of her particulars to read as follows: "[o]n or about the 23rd of October 2018 and at or between Webber Train Station and Parkhill Train Station, Germiston, the deceased was pushed out of the moving train, while possessing a valid train ticket and fell in between the rail tracks, and while the train was in motion, and sustained fatal injuries".

13 PRASA then took the opportunity to amend its plea, and substituted its bare denial with the following allegations –

5.1 The deceased was not in possession of a train ticket.

5.2 The deceased was coming from Katlehong and changed trains at Elsburg Station to a train that was coming from Vereeniging heading to Germiston.

- 5.3 The train was already full at the time when the deceased boarded.
- 5.4 The deceased fell off the already full train that was heading to Germiston while it was moving, which he had illegally boarded.
- 5.5. The deceased was an illegal commuter trying to board a moving train without a train ticket.
- 5.6 The deceased was the author of his own demise.

14 On the pleadings, therefore, it is admitted both that NJL boarded a train to Germiston and that he fell off an overcrowded train somewhere between the Webber and Parkhill stations. Moreover, at paragraph 4.2 of the pre-appeal minute filed immediately before the hearing of this appeal, the relevant factual issue between the parties was defined as whether NJL fell from, or was pushed from, the train.

15 At the hearing of this appeal, it was put to Ms. Tshifhango, who appeared for PRASA, that these admissions placed the matter beyond dispute. It was agreed between the parties that NJL boarded an overcrowded train to Germiston, and that he fell off or was pushed off between the Webber and Parkhill stations. In these circumstances, it had to be concluded that there must have been an open door through which the NJL exited the train while it was moving. In the absence of any contrary indication, the unsecured door must have been the negligent cause of NJL's death.

16 Ms. Tshifhango's submissions in response are not easily summarised, and I cannot say that I am satisfied that the case advanced in oral argument is consistent with the case advanced in the written submissions made on PRASA's behalf. In any event, PRASA's case seems to have been two-fold. The first leg of the case was based on the assertion that the Regional Court's

reasoning was correct. No liability could follow in the absence of direct evidence of how NJL fell from the train. In this respect, Ms. Tshifhango sought to buttress the Regional Court's decision by urging us to draw an adverse inference from MBM's failure to call V, who was a friend of NJL's said to have been present at the time NJL fell.

17 The second leg of the case was that NJL had a ticket for the line between Kwesine and Germiston, but was not found on that line. He was in fact found on the line between Vereeniging and Germiston. This meant, so the argument went, that NJL must have fallen from the Vereeniging to Germiston train, for which he did not have a valid ticket, and that PRASA should be relieved of liability on that basis.

18 I do not think that either of these arguments, even if accepted, could displace the admissions made on the pleadings. I address each of them in turn. I have already pointed out the respects in which the Regional Court was mistaken in requiring direct evidence of exactly how NJL fell to his death. The fall was common cause on the pleadings, and the natural and probable inference is that the fall must have taken place where NJL's body was found between the Parkhill and Webber stations. NJL could have ended up dead on the tracks only by exiting the train as it passed between these two stations. In these circumstances, the failure to call V was of limited significance. Although V could presumably have given direct evidence of exactly how NJL fell off the train, his evidence would have done very little to sway the probabilities either way. On the admitted facts, NJL was on an overcrowded commuter train and fell off it. He could only have done so through an open door. It seems to me

that V's evidence was not so material as to justify an adverse inference from the failure to call him.

19 Similarly, the second leg of Ms. Tshifhango's argument cannot be accepted. Notwithstanding the bald allegation in PRASA's plea, Ms. Tshifhango accepted before us that NJL was in possession of a valid ticket. The ticket was never produced at trial and Ms. Tshifhango's oral submissions were not clear on the route for which the ticket was valid. Nevertheless, it is recorded in the occurrence report produced at trial, which was written by N, PRASA's security commander, that the ticket found on NJL was valid for travel between Kwesine and Cleveland, which is a route that runs through Germiston.

20 On the sketch-plan agreed between counsel, and submitted to the Regional Court, both the Vereeniging to Germiston and Kwesine to Germiston lines run between the Parkhill and Webber stations. There is nothing in the occurrence report that indicates whether NJL's body was found on the Vereeniging or Kwesine lines. Nor is it clear to me how far the lines are from each other. I will accept in PRASA's favour, however, both that NJL was found on the Vereeniging line, and that from this must be inferred the fact that he fell from the Vereeniging to Germiston train. This is also consistent with the evidence given by VS, a train driver called on PRASA's behalf. At paragraph 4.33 of her written submissions, Ms. Tshifhango identified VS as "the train driver on the day of the alleged incident", by which I shall assume in PRASA's favour is meant that VS drove the train from which NJL fell. VS gave evidence that the photographs of the scene where NJL's body was found are not of the Kwesine to Germiston line.

- 21 Nevertheless, I am not prepared to accept that this meant that PRASA had no duty of care to NJL. Decisions to the contrary (see *Bhiya v Passenger Rail Agency of South Africa* [2023] ZAGPPHC 35 (26 January 2023), see especially paragraph 78) are not binding on us, and are plainly wrong. The mere fact that a person travels on a train without a ticket does not absolve PRASA of its duty to make the train safe. Ms. Tshifhango was invited to submit that the mere fact that a passenger does not have a valid ticket absolves PRASA from any duty to take such reasonable steps as are within its power to ensure that they survive their journey. To her enduring credit, Ms. Tshifhango declined to make that submission.
- 22 In any event, in this case, it was ultimately agreed that NJL was in possession of a valid ticket. The only difficulty is raised by PRASA's submission is that the ticket was not valid for travel on the line next to which NJL's body was found. To conclude that this meant PRASA had no duty of care to NJL, I would have to find that PRASA's duty of care evaporates the moment a paying passenger gets on the wrong train. I do not think that the legal convictions of the community, even the convictions of those who believe a non-paying passenger takes their life in their hands, can tolerate such a conclusion.
- 23 In her written submissions, Ms Tshifhango made something of the fact that VS gave evidence that he noticed nothing unusual on the day in question, and that he inspected his train when he came on shift and found all the train doors to be secure. Be that as it may, PRASA must be held to its pleadings. Its pleadings accept that NJL was on one of its trains, and that he fell from it. It is common cause that NJL was then found dead on the tracks. That VS

inspected his train and that he failed to notice anything unusual on the day of the incident provides PRASA with no refuge against those admissions.

The status of PRASA's plea amendment

24 During argument, we asked Mr. Snoyman whether the amendment to PRASA's plea was formally effected under the Magistrates' Court Rules. The question arose from the fact that there were two substantially similar notices of intention to amend PRASA's plea on the record, but the plea as amended does not itself appear. Mr. Snoyman agreed that there is no indication on the record that PRASA's amendment was ever formally effected, but he submitted that the case PRASA advanced at trial was based on the facts introduced in the amendment. That was the case MBM sought to meet at trial. The Regional Court dealt with the case on the basis that PRASA's plea was properly amended. This is also clear from reading the trial record as a whole. Moreover, much of Ms. Tshifhango's case presented before us was based on the facts introduced in the amendment.

25 Notwithstanding all of this, during the course of her oral argument, and presumably when it became clear to her what the consequences of the amendment to PRASA's case really were, Ms. Tshifhango sought to resile from the admissions contained in the amendment, solely on the basis that the amendment was never formally effected by the delivery of amended pages. We reject that approach. In the first place, we do not know whether the amendment was formally effected. It may well have been. The problem is merely that the formally amended plea was not included in the record. Neither counsel could definitively say whether PRASA's attorney actually delivered

the amended pages. More fundamentally, however, PRASA has argued its case at every stage of the trial and of the appeal on the basis of the amendment to its plea. The prejudice to MBM from permitting PRASA to resile from the admissions made in the amendment at this stage is obvious. The facts in the amendment also accord in every respect with the documentary and oral evidence given at trial. PRASA cannot be permitted to change its case now merely because the amendment no longer suits that case.

Order

26 The upshot of all of this is that there is no dispute between the parties that NJL boarded one of PRASA's trains, and then fell to his death while the train was travelling between the Webber and Parkhill stations. PRASA admitted that the train was overcrowded, which seems reasonable given that the fall likely happened during peak commuter hours. Mr Snoyman was right to submit that these surrounding circumstances speak for themselves. The only way NJL could have exited the train was through an open door. PRASA is under a legal duty to keep the doors of a moving train closed. PRASA's failure to fulfil that duty was likely the wrongful and negligent cause of NJL's death. If there was evidence to the contrary, PRASA bore the burden to produce it (*Stacey v Kent* 1995 (3) SA 344 (E) 352E-H). No such evidence was produced.

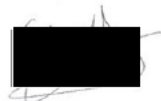
27 For all these reasons –

27.1 The appeal is upheld with costs, including the costs of counsel, which may be taxed on the "B" scale.

27.2 The order of the Regional Court is set aside, and is replaced with the following order –

1. The defendant is liable for any losses resulting from the plaintiff's husband's death that may be proved.
2. The defendant is to pay the costs of the trial to date.

27.3 The matter is remitted to the Regional Court for further proceedings consistent with this judgment.



S D J WILSON
Judge of the High Court

This judgment was prepared by Judge Wilson, with whom Judge Wentzel agrees. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 12 May 2026.

HEARD ON: 28 April 2026

DECIDED ON: 12 May 2026

For the Appellant: C Snoyman
Instructed by Makgormetje Makgahele Inc

For the Respondent: T Tshifhango
Instructed by Madhlopa & Thenga Attorneys