REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: A2025-170260

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

[redacted]

17/06/2026

DATE SIGNATURE

In the appeal between:

PASSENGER RAIL AGENCY OF SOUTH AFRICA (SOC) LIMITED **Appellant**

and

ZIYANDA BANJIWE KHALIPA **Respondent**

JUDGMENT

Mahosi J (Fisher J and Shakoane AJ concurring)

[1] This appeal concerns whether the trial court's apportionment of liability is legally sustainable, given its own factual findings that the respondent's case was improbable, unreliable, and contradicted by the objective evidence. It is before us with the leave of the trial Court.

[2] On 13 May 2011, the respondent, then a 24-year-old auxiliary nursing student, was at Johannesburg Park Station intending to board a train operated by the appellant to return to her residence in Carletonville with a valid monthly train ticket. She alleged that after boarding a stationary train with its doors open, she stood in the middle of a crowded coach because no seats were available. As the train began to move, she claimed that other commuters rushed in through a door behind her and pushed her from the train, causing her to fall onto the platform.

[3] Her legs became trapped between the train and the platform edge, resulting in a fracture to her right ankle and a laceration to her left thigh. She was taken to Helen Joseph Hospital, where she was admitted for approximately four days. Subsequently, she discontinued her nursing studies and later obtained a National Certificate in Marketing, eventually securing employment as an administrative clerk at the South African Police Service.

[4] The respondent instituted an action against the appellant, claiming damages totaling R7 952 000.00. The appellant defended the action, pleading that the sole cause of the accident was the respondent's own negligence. In particular, the appellant alleged that she had attempted to board the train after it was already in motion, with its doors closed, having followed all pre-departure safety warnings. In the alternative, the appellant pleaded contributory negligence. The matter proceeded to trial on the issue of liability only, following a separation of merits and quantum in terms of Rule 33(4).

[5] The trial was heard on 6 and 7 March 2025 before Dippenaar J. The respondent testified in support of her case. The appellant called two witnesses, namely, Mr. Aqhamile Adolphus Mashiba ("Mr. Mashiba"), a security officer who claimed to have witnessed the incident, and Mr. Vusimuzi Khuzwayo, a protection officer who attended the scene. An inspection *in loco* and video evidence from the station were also admitted into evidence.

[6] Mr. Mashiba testified that he saw the respondent coming down the stairs towards the platform "walking fast" in an attempt to board a train that was about to depart, with the guard's whistle already blown. He said the train was stationary when she reached it, and the doors were already closing as it began to move away when

she attempted to board. Mr. Mashiba emphasised that it was improper for her to try to board a moving train, confirming that only the platform-side doors were open for boarding. After the incident, he and others alerted the train guard, leading to the train's stop. Mr. Khuzwayo testified that he attended the scene after the incident and was informed by the respondent that she was running for the train and fell as she put her foot on the coach floor while the train pulled away. He also stated that he saw the respondent on the upper level running towards the platform, but did not witness the incident itself.

[7] On 25 March 2025, the trial court delivered a judgment in which it made several adverse findings against the respondent, including that her version differed from her pleadings, that she had tailored her evidence, and that the probabilities favoured the appellant's version. The court also found that the inspection *in loco* proved the respondent's account of a platform on both sides of the train to be false. Despite these findings, the trial court did not dismiss the claim. Instead, it found the appellant 20% liable and the respondent 80% contributorily negligent, apportioning liability accordingly. It further ordered the appellant to pay the respondent's costs on Scale B. The appellant sought leave to appeal, which the trial court granted on 1 September 2025.

[8] The grounds of appeal are that the trial court misdirected itself by finding the appellant 20% liable for the respondent's damages despite having made a series of contradictory factual findings that should have led to a complete dismissal of the claim. Specifically, the appellant contends that the trial court erred in not dismissing the claim when it found that the respondent's evidence differed from her pleadings, that she had tailored her evidence, that the inspection *in loco* proved her version, that she was pushed from behind by passengers entering from a platform on the other side, to be physically impossible, and that the probabilities favoured the appellant's version.

[9] The appellant contends that the trial court's 20% liability finding is unsupported by the evidence and wrong, as the proper order ought to have been dismissal of the claim with costs. In essence, the appellant appeals against the trial court's failure to apply its own findings of fact to the legal standard of proof, thereby erroneously imposing partial liability on the appellant where none should exist.

[10] The principles governing appeals against factual findings are well-established. An appellate court will not readily interfere with the factual findings of a trial court, which had the advantage of seeing and hearing the witnesses. However, interference is warranted where the trial court's findings are clearly wrong, or where it has misdirected itself on the facts or the law.[1] This is such a case.

[11] It is trite that in a civil case, the onus is on the party claiming relief to prove their case on the balance of probabilities.[2] The respondent was the *dominus litis*. She bore the burden of proving that the appellant was negligent and that its negligence caused her injuries. Her own evidence, found to be tailored and improbable on a material aspect, the existence of a second platform, fatally undermined her claim. In addition, the inspection *in loco* proved her version physically impossible.

[12] In *Stellenbosch Farmers' Winery Group Ltd and Another v Martell Et Cie and Others* [3], the Supreme Court of Appeal summarised the technique generally employed by courts in resolving factual disputes as follows.

> "To come to a conclusion on the disputed issues a court must make findings on *(a)* the credibility of the various factual witnesses; *(b)* their reliability; and *(c)* the probabilities. As to *(a)*, the court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness' candour and demeanour in the witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extracurial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. As to *(b)*, a witness' reliability will depend, apart from the factors mentioned under *(a)*(ii), (iv) and (v) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to *(c)*, this necessitates an analysis and evaluation of the probability

[1] *See Bee v Road Accident Fund* 2018 (4) SA 366 (SCA), at para 46
[2] See *National Employers' General Insurance Co Ltd v Jagers* 1984 (4) 437 (E), at 440D.
[3] 2003 (1) SA 11 (SCA), at para 5.

> or improbability of each party's version on each of the disputed issues. In the light of its assessment of *(a)*, *(b)* and *(c)* the court will then, as a final step, determine whether the party burdened with the *onus* of proof has succeeded in discharging it. The hard case, which will doubtless be the rare one, occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors are equipoised probabilities prevail."

[13] In the current matter, the trial court's judgment is internally contradictory. A court cannot find that a plaintiff's version is improbable, tailored, and unreliable; that the probabilities favour the defendant's version; and then proceed to find the defendant partially liable. These findings are mutually destructive. Once the court found that the probabilities favoured the appellant and that the respondent's case lacked credibility, the only logical conclusion was that the respondent had failed to discharge the onus of proof resting on her.

[14] The finding of 20% liability against a defendant whose version the court has accepted and whose witnesses it has found credible is a *non-sequitur* and, therefore, a clear misdirection. There is no rational basis for it in the trial court's own findings of fact.

[15] The trial court effectively penalised the appellant for an incident that, on its own findings of probability, was solely the respondent's fault. The appellant's submission that the court ought to have dismissed the claim is, thus, unanswerable. Accordingly, the appeal must be upheld.

[16] The appellant seeks costs on Scale B. However, considering that the appeal is unopposed and the matter is not complex, there should be no order as to costs.

Order

[17] Accordingly, the following order is made:

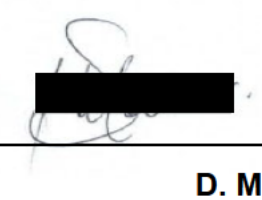
1. The appeal against the judgment and order of Dippenaar J, handed down on 25 March 2025 under Case No. 46963/2011, is upheld.

2. The said judgment and order are set aside and replaced with the following:

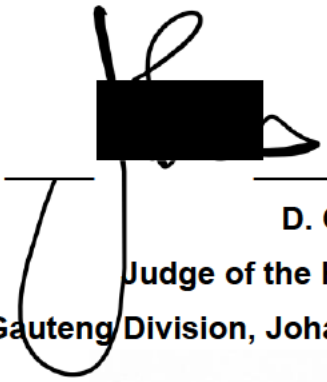
   (a) The plaintiff's claim is dismissed.

   (b) The plaintiff is to pay the defendant's costs of the action on Scale B.

3. There is no order as to costs in the appeal.



D. Mahosi
Judge of the High Court
Gauteng Division, Johannesburg



D. C. Fisher J
Judge of the High Court
Gauteng Division, Johannesburg

G. Shakoane AJ
Acting Judge of the High Court
Gauteng Division, Johannesburg

Heard on: 22 April 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives through email. The hand-down date is deemed to be 17 June 2026.

Appearances

For the appellant: Advocate T. Ramatsekisa
Instructed by: Buthelezi Vilakazi Incorporated Attorneys

For the respondent: Unopposed