



**THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Not Reportable

Case No: 2758/2014

In the matter between:

AISHA BARNABAS

PLAINTIFF

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA

DEFENDANT

Coram: YAKE AJ

Heard: 11 August 2026

Delivered: Electronically on 26 August 2026

Summary: Delict – PRASA under public legal duty to ensure reasonable security measures are in place to protect passengers from harm – failure to close carriage’s doors amount to negligence– validity of train ticket not a requirement for liability.

ORDER

1. The defendant is liable for 100% of the plaintiff's proven damages resulting from the incident of falling from a train on 9 May 2011.
2. The defendant is ordered to pay the plaintiff's costs on a party and party scale, including the cost of Counsel to be taxed on a Scale B.

JUDGMENT

YAKE, AJ:

Introduction

[1] The plaintiff instituted an action against the defendant for damages arising from an incident which occurred on 9 May 2011 on a train operated by the latter, travelling from Cape Town to Mitchell's Plain via Nyanga stations. It is alleged that when the train departed from Nyanga station, a commotion arose within the carriage occupied by the plaintiff. During the course of the commotion, the plaintiff was allegedly pushed out of the moving train through an open door ("the incident") by a man who purportedly robbed her of her bag. Consequently, upon this occurrence, the plaintiff fell onto the adjacent railway track and sustained injuries.

[2] The plaintiff avers that the incident was occasioned by the negligence of the defendant and/or its employees, in that they permitted the train to travel with its doors open, thereby failing to exercise the reasonable care and diligence required to avert foreseeable harm.

[3] As a result of the incident, the plaintiff sustained a severe laceration to the leg, a laceration to the head accompanied by a haemorrhagic contusion, and a dislocated shoulder. She was thereafter hospitalized, underwent medical treatment, rendered disabled, suffered pain, and is anticipated to suffer loss of income as well as a diminution in the amenities of life.

[4] The defendant, in turn, denies negligence and pleads that the plaintiff was solely responsible for her injuries. In the alternative, it contends that, should the Court find negligence on its part, the plaintiff's own conduct contributed thereto.

[5] At the commencement of the trial, the parties agreed to separate the issues of merits and quantum. The proceedings thus advanced on the merits alone. Two witnesses testified in support of the plaintiff's case, while one witness was called on behalf of the defendant.

Plaintiff's case

[6] The plaintiff testified that on 9 May 2011, between 17h00 and 18h00, she was returning home from work. She boarded a train from Salt River bound for Cape Town station, where the doors were closed. Upon arrival at Cape Town, she changed to a train destined for Mitchell's Plain via Nyanga stations. On this latter train, the doors remained open from Cape Town until Nyanga station.

[7] The plaintiff testified that, owing to the absence of available seating, she was standing in the middle of the carriage. She observed approximately five men commencing to rob passengers. A commotion ensued, with passengers rising and moving towards the end of the carriage. In the course of this movement, she was pushed in the direction of the open doors. As the train began to move, one of the men approached her while she was positioned close to the door. This man passed

her, grabbed her bag which was on her right arm, and jumped out from the train. In doing so, he pulled her by her jacket, causing her to be dragged out of the carriage and to fall onto the railway tracks, landing on her back.

[8] Under cross-examination, she was confronted with the discrepancy between her viva voce evidence and her particulars of claim. It was put to her that she had not pleaded that a robbery occurred on the train. She clarified that, from her vantage point, she initially believed the disturbance in the carriage to be a fight. It was only when the perpetrators came closer that she realised the incident was in fact a robbery.

[9] After her fall, she was conveyed by fellow passengers to Mitchell's Plain Day Clinic by train and was thereafter transferred to Groote Schuur Hospital for further medical treatment. While she remained hospitalised, her bag was returned to her father's residence. Her belongings, including her monthly train ticket, were found intact therein.

[10] Following the incident, the plaintiff recounted the events to her friend, Ms Shamilla Abrahams, who was employed by the defendant. Ms Abrahams indicated that she would consult her supervisor. After doing so, she advised the plaintiff to submit her monthly train ticket. Upon submission, the defendant offered the plaintiff compensation in the amount of R50 000. The plaintiff declined the offer, asserting that she had legal representation. However, under cross-examination it emerged that, at the time she rejected the defendant's offer, she had not yet consulted attorneys.

[11] Ms Shamilla Abrahams confirmed that the plaintiff is her friend. At the time of the incident, she was employed by the defendant, where her duties included receiving complaints and providing information to passengers. She testified that, whilst on duty, the complainant attended at the information office

and reported the incident to her. Ms Abrahams recorded the complaint in the official complaint report book, took down the complainant's personal details, and received her monthly train ticket. She then handed the ticket to her supervisor, Mr Robert Matiwane, who signed the complaint report book and thereafter took possession of the ticket.

[12] Under cross-examination, Ms Abrahams was confronted with the plaintiff's evidence that the plaintiff had informed the court that she did not have her train ticket during their first meeting but only produced it on a subsequent occasion. In response, Ms Abrahams altered her testimony, stating that it was possible that she had in fact received the ticket during the second meeting. This concluded the evidence for the plaintiff.

Defendant's case

[13] The defendant called Mr Thando Klaas, its investigator, to testify. His evidence was largely of a procedural nature and did not materially advance the resolution of the dispute. He explained that when an incident is reported at a station, the station records the complaint and forwards it to the regional office, which in turn submits it to the head office legal department. The legal department then makes a determination, and any decision, including an offer of compensation, is communicated to the claimant in writing, not telephonically.

[14] Mr Klaas further testified that he assumed responsibility for the matter from last year (2025), having taken over from his colleague, Mr Van Reenen, who had been the original investigator. He consulted the incident register and retrieved a fault report. His investigation confirmed that the plaintiff had reported the incident. He stated, however, that the defendant does not physically take

possession of a passenger's ticket when an incident is reported but merely records the ticket number. This practice, he explained, ensures that the passenger retains proof of having held a valid ticket.

[15] Under cross-examination, he conceded that he was not involved in the settlement process, which fell within the remit of the defendant's legal department. He further acknowledged that he lacked first-hand knowledge of the incident, as he was not the original investigator, and that his evidence was based on the work conducted by his predecessor.

[16] Save for admitting that the incident occurred on 9 May 2011, and that it bore a legal duty to provide reasonable measures of safety to its commuters, the defendant denied that the plaintiff was a fare-paying passenger and denied that she was pulled out of the moving train.¹ The defendant further denied that its employees were negligent in any manner.² It contended that the plaintiff was solely negligent, alternatively that she contributed to the negligence which resulted in her injuries.³ In particular, the defendant pleaded that the plaintiff failed to exercise reasonable care for her own safety, and that her conduct in the circumstances materially contributed to the harm she suffered. With this, the defendant closed their case.

Issues to be determined

[17] The Court is enjoined to determine the following issues:

- (a) Whether the plaintiff was in possession of a valid ticket entitling her to be on the train;

¹ Page 18 and 19 of record at para 3.1 to 3.2

² Page 19 of record at para 5.2

³ Page 19 and 20 of record para 5.4 to 5.6

- (b) Whether the doors of the train were left open whilst the train was in motion, thereby constituting prima facie negligence on the part of the defendant;
- (c) Whether a causal nexus exists between any negligent conduct on the part of the defendant and the injuries sustained by the plaintiff; and
- (d) In the event that negligence on the part of the defendant is established, whether the plaintiff's own conduct contributed thereto, thus warranting an apportionment of liability in terms of the Apportionment of Damages Act.⁴

Analysis

Valid train ticket

[18] It is trite that the existence of a valid train ticket constitutes, at the very least, prima facie proof that the plaintiff was a passenger and thus a lawful train user. The onus accordingly rests upon the plaintiff to establish her lawful presence on the train. This burden may be discharged through documentary evidence such as the ticket itself, a receipt of purchase, or corroborating testimony. Ordinarily, such proof suffices to establish contractual entitlement to conveyance and affirms the contractual nexus between passenger and carrier, thereby strengthening the plaintiff's standing to claim. However, as correctly contended by the plaintiff's counsel, the absence of a ticket is not a *sine qua non* for liability. Liability does not depend exclusively upon proof of contractual breach or possession of a valid ticket. The Court must therefore weigh the credibility and reliability of the evidence tendered against the probabilities, in order to determine the liability of the defendant.

⁴ Apportionment of Damages Act 34 of 1956.

[19] South African jurisprudence recognises that common carriers, such as the defendant, owe a general duty of care to all persons lawfully upon their premises or conveyances. Even in the absence of contractual entitlement, liability may arise in delict where harm is foreseeable and preventable. Accordingly, while possession of a valid ticket evidence contractual entitlement and strengthens the plaintiff's standing, its absence does not necessarily absolve the defendant of liability. The enquiry must therefore extend beyond contractual entitlement to encompass the broader delictual duty of care owed by carriers, measured against the standard of reasonableness.

[20] The evidence placed before this Court is that the plaintiff held a monthly ticket, a version corroborated, albeit imperfectly, by Ms Abrahams. The defendant adduced no direct evidence to contradict this assertion, relying instead upon the absence of pleading particulars and alleged inconsistencies. While it is correct that the plaintiff did not furnish identifying details of the ticket in her pleadings, such omission is not in my view necessarily fatal where viva voce testimony is led and remains substantively unchallenged. The defendant's reliance upon the testimony of Mr Klaas, which was plainly derivative and devoid of first-hand knowledge, does little to advance its case. Such evidence, lacking independent probative value, cannot meaningfully undermine the plaintiff's version.

[21] I note that the defendant seeks to rely on the contradictions between the evidence of the plaintiff and that of Ms Abrahams; as well as the discrepancies in the particulars of claim. These contradictions while noted, are not of such magnitude as to displace the core of the plaintiff's version. They are reasonably attributable to the considerable lapse of time; 15 years; between the incident and the testimony. As such the Court must guard against elevating minor inconsistencies into determinative findings, particularly where the essential fact,

namely that the plaintiff possessed a monthly ticket, remains supported by corroborative testimony.

[22] Similarly, the discrepancies between the pleadings and the viva voce evidence have been explained by the plaintiff. Moreover, it must further be borne in mind that pleadings are not intended to be models of precision, but rather to define the core issues in dispute between the parties, so that each party is made aware of the case it must meet. In this context, the plaintiff's oral testimony, corroborated in material respects, carries sufficient weight to overcome the defendant's reliance on technical pleading omissions.

[23] Furthermore, the omission to call the plaintiff's father is regrettable but not decisive, for the central issue remains whether the plaintiff herself held a valid ticket. In any event, as emphasised in *Marbe NO v PRASA*,⁵ possession of a valid ticket is not a prerequisite for liability. The Constitutional Court in *Mashongwa v PRASA*⁶ underscored that the defendant bears a positive constitutional duty, flowing from Section 12 of the Constitution,⁷ to take reasonable measures to protect passengers from foreseeable harm while making use of its services. This duty arises from the very nature of the defendant's operations as a public carrier entrusted with the safe conveyance of commuters, and not from the existence of a contractual entitlement such as a ticket.

[24] As such I agree with Counsel for the plaintiff's submission that the presence of some contradictions may in fact support the credibility of the witnesses. Perfectly aligned testimony after such a lengthy passage of time might have raised suspicion of coaching or collusion. Minor inconsistencies are, in my view consistent with natural human memory and do not materially detract from

⁵ *Marbe NO v Passenger Rail Agency of South Africa* [2026] ZAWCHC 43.

⁶ *Mashongwa v PRASA* [2015] ZACC 36; 2016 (2) BCLR 204 (CC); 2016 (3) SA 528 (CC).

⁷ The Constitution of the Republic of South Africa, 1996.

the plaintiff's case. It would further be unreasonable to expect the plaintiff to recall the precise cost of a monthly train ticket in 2011. Such detail is peripheral to the central inquiry, which is whether she was a lawful train user. Instead, the Court must focus on substance rather than minutiae.

[25] Regarding whether the incident constituted a robbery or a fight, the plaintiff explained that she initially believed it to be a fight, but upon closer proximity, she realised it was a robbery. This explanation is, in my view acceptable, as it reflects the natural progression of the plaintiff's perception in a chaotic environment. This does not in any way detract from her credibility as a witness. Similarly, while concerns of bias have been duly noted, they do not suffice to displace the *prima facie* proof that the plaintiff was a passenger. Bias alone does not render testimony inadmissible or unreliable. The Court must consider whether the witness's account is consistent with the probabilities and withstands scrutiny in light of the broader evidentiary record. In this matter, the evidentiary record supports the conclusion that the plaintiff held a valid monthly ticket, thereby establishing her lawful presence upon the train.

[26] In the result, I found that the plaintiff and Ms Abrahams to be credible and reliable witnesses despite minor contradictions and discrepancies in their evidence. It is my considered view that the contradictions and the peripheral uncertainties highlighted by the defence do not suffice to undermine the plaintiff's version. The plaintiff's evidence that she held a valid monthly ticket stands on a balance of probabilities. The defendant's argument concerning the absence of a ticket is in my view irrelevant to the determination of delictual liability. Its reliance on this defence is misconceived, legally untenable, and stands to be dismissed. The duty of care owed to commuters arises independently of

contractual entitlement and is rooted in both constitutional and delictual principles⁸

[27] I align myself with the sentiments expressed by Magona-Dano AJ in *Marbe NO*⁹ *supra*, where it was held that the absence of a ticket is not a statutory requirement for liability and does not extinguish the duty of care owed by the defendant to its commuters. Accordingly, I find that the plaintiff held a valid monthly ticket and was a lawful train user. In the result, the Court is satisfied that the plaintiff has discharged the onus of proving lawful presence on the train. The inquiry must now proceed to the second issue, namely whether the defendant had a legal duty of care to the plaintiff.

Wrongfulness and the defendant's legal duty

[28] The plaintiff has averred in her particulars of claim that in terms of sections 15 and 23(1) of the Legal Succession to the South African Transport Services Act 9 of 1989 ('the Act'), the defendant was under a legal duty to take such steps as were reasonable to ensure her safety while travelling in one of its trains. The plaintiff contends that the defendant omitted to discharge the aforesaid duty by failing to ensure that security personnel were dispatched to safeguard commuters, and by failing to take reasonable steps to put and implement a proper and adequate safety and security service. The plaintiff further contended further that the defendant failed to install a safe and secure door system which would remain closed at all times whilst the train is in motion. These omissions, she argued, constituted a breach of both the defendant's statutory obligations under the Act and its broader duty of care, thereby exposing commuters to foreseeable harm.

⁸ *Shabalala v Metrorail* [2007] ZASCA 157 par 7.

⁹ *Marbe NO supra* para 69 - 74.

[29] Conversely, the defendant did not deny the existence of such legal duty but denied that its employees were negligent in any manner, alleging instead that the plaintiff was the sole cause of negligence, alternatively that she contributed thereto.¹⁰

[30] As a public carrier operating in the public interest, the defendant is expected to operate trains which are safe for the purpose of conveying passengers. It bears a legal duty to the public at large to take such steps as are reasonably necessary to ensure the safety of commuters whilst travelling on any of its trains. The public law duty to provide transport that is safe and secure for commuters manifests itself in the private-law legal duty to prevent harm to commuters.¹¹

[31] In *Rail Commuters Action Group v Transnet Limited t/a Metrorail*¹² the Constitutional Court recognized that rail commuters in their thousands use the rail system daily and once they board a train, find themselves in a vulnerable position and even targeted by criminals on board the same train. Paragraph 82 of the aforementioned judgment held that Metrorail owed a positive duty to ensure that reasonable measures were in place to cater for the safety and security of rail commuters. Significantly, the Constitutional Court made it clear that it mattered not who implemented these measures as long as they were in place. The court went further to state that:

‘In these circumstances, I conclude that Metrorail and the Commuter Corporation bear a positive obligation arising from the provisions of the SATS Act read with the provisions of the Constitution to ensure that reasonable measures are in place to provide for the security of rail commuters when they provide rail commuter services under the SATS Act. It should be clear from the duty thus formulated that it is a duty to ensure that reasonable measures are in place. It does not matter who provides the measures as

¹⁰ Page 19 - 21 of record.

¹¹ *Mashongwa v PRASA* [2015] ZACC 36 para 28 – 29.

¹² *Rail Commuters Action Group and Others v Transnet Limited t/a Metrorail and Others* [2004] ZACC 20; 2005 (2) SA 359 (CC); 2005 (4) BCLR 301 (CC) para 82 – 85.

long as they are in place. The responsibility for ensuring that measures are in place, regardless of who may be implementing them, rests with Metrorail and the Commuter Corporation.’

[32] In *Mashongwa*,¹³ the Constitutional Court, following the principle established in *Rail Commuters*¹⁴ case, confirmed that the defendant owed a public duty to rail commuters and described this duty as follows:

‘Safeguarding the physical and well-being of passengers must be a central obligation of PRASA. It reflects the ordinary duty resting on public carrier’s and is reinforced by the specific constitutional obligation to protect passengers’ bodily integrity that rests on PRASA, as an organ of state. The norms and values derived from the Constitution demand that a negligent breach of those duties, even by way of omission, should, absent a suitable non-judicial remedy, attract liability to compensate injured persons in damages.’

[33] It must be emphasized from the outset that the defendant accepted that it owed a legal duty of care to commuters in general which include among others to ensure that the train doors are closed when the train is in motion. Against the backdrop of *Mashongwa* and *Rail Commuters* supra, it is thus apparent that the defendant bears a public law duty to protect rail commuters, which includes a duty of care towards the plaintiff. Put differently, there can be no doubt that the defendant owed the passengers who made use of its services, including the plaintiff, the legal duty as contended for by the plaintiff. However, this does not mean that the mere existence of such duty automatically translates into delictual liability. For liability to arise in delict, the defendant must have failed to take reasonable steps to provide for the safety of commuters, and such failure must be causally connected to the harm suffered. Any omission to take such steps may render the defendant liable in delict.¹⁵ This leads to the next inquiry, namely

¹³ *Mashongwa* supra para 26 – 27.

¹⁴ *Rail Commuters* supra para 82.

¹⁵ *Shabalala v Metrorail* [2007] ZASCA 157 para 7.

whether the defendant was negligent in permitting the train doors to remain open whilst the train was in motion, thereby breaching its legal duty.

Negligence

[34] The test for negligence as set out in *Kruger v Coetzee*,¹⁶ can be summarised as follows:

- (a) first, whether a reasonable person in the position of the defendant would foresee the reasonable possibility of harm;
- (b) second, would the defendant take steps to guard against such harm; and
- (c) third, did the defendant in fact take such reasonable steps to avert the harm.

[35] The Court must scrutinise the factual matrix, including the testimony of the witnesses and operational records, to determine whether the defendant failed in its duty to ensure passenger safety. In *Ngubane v South African Transport Services*,¹⁷ Kumleben JA adopted and applied this *dictum* on the basis that the ‘reasonable steps’ envisaged in paragraph (a)(ii) were ‘not necessarily those which would ensure that foreseeable harm of any kind does not in any circumstances eventuate’. The learned Judge relied in this regard on a passage from the first edition of *LAWSA* volume 8 para 43 at 78, where Professor J C van der Walt stated that, ‘once it was established that a reasonable man would have foreseen the possibility of harm, the question arose whether he would have taken measures to prevent the occurrence of the foreseeable harm. This would depend on the circumstances of the case, subject to four basic considerations which might

¹⁶ *Kruger v Coetzee* 1966 (2) SA 428 (A) at 430.

¹⁷ *Ngubane v South African Transport Services* [1990] ZASCA 148; 1991 (1) SA 756 (A) at 776D-777J.

be relevant to the response of a reasonable man to a situation creating a foreseeable risk of harm to others.’

[36] The evidence before this court which remained unchallenged, is that when the plaintiff boarded the train from Salt River to Cape Town stations, the doors were closed. However, when the train proceeded from Cape Town en route to Mitchell’s Plain, the doors remained open. Furthermore, it was unchallenged that no security personnel were present in the carriage to ensure that the doors were closed while the train was in motion.

[37] I take cognisance of Mr Klaas’s evidence that trains do not operate with doors open, and his suggestion that any fault would have been recorded in the fault register. Yet, his testimony was based on a document he did not author, and his contention is far-fetched. This Court takes judicial notice that trains are, from time to time, in motion while commuters stand at open doors. Moreover, Mr Klaas’s assertion is not supported by the evidence in this matter, nor by numerous other cases adjudicated against the defendant by different courts. If his contention were correct, the plaintiff would not have been pulled out of the train, and the incident would not have occurred.

[38] The demeanour and content of Mr Klaas’s evidence did not leave a favourable impression upon this Court. He came across as the person whose sole purpose in testifying was to defend the position of the defendant. This is borne out by his assertion, made as a matter of fact, that the train doors were not open, notwithstanding that he relied entirely upon the findings of his colleague and possessed no first-hand knowledge of the incident. His reluctance to make concessions on matters falling squarely within the scope of the legal department, of which he is not a member, further undermined the credibility of his testimony. While counsel for the defendant endeavoured to create the impression that Ms

Abrahams was biased, the Court finds that it was Mr Klaas who demonstrated partiality. He purported to testify on matters beyond his personal knowledge, thereby diminishing the probative value of his evidence. The Court is compelled to conclude that the defendant sought to escape liability by presenting evidence of a witness whose knowledge was derivative and whose testimony was coloured by bias.

[39] Our courts have repeatedly cautioned against the danger posed by trains operating with doors open while in motion. In *Chauke v Passenger Rail Agency of South Africa*,¹⁸ with reference to *Transnet Limited t/a Metrorail and Another v Witter*,¹⁹ the court confirmed that a train moving with open doors constitutes negligence. Similarly, in *Passenger Rail Agency of South Africa v Moabelo*,²⁰ the courts held that an open train door is a potential danger while the train is in motion and that such danger exists in relation to every commuter on board the train.

[40] In *Mashongwa*,²¹ the Constitutional Court emphasised that the defendant's duty to keep the train doors closed while the train is in motion exists to prevent passengers from falling out. Doors exist not merely to facilitate entry and exit of passengers, but also to secure those inside from danger. The Court clarified that the negligence test in the context of the defendant involves the standard of a reasonable organ of State test,²² not merely that of a reasonable person. This recognizes that an organ of State is in a different position to that of an individual. The question is whether a reasonable organ of State, in the defendant's position, would have foreseen harm befalling the plaintiff as a result of the train doors being open while in motion.

¹⁸ *Chauke v Passenger Rail Agency of South Africa* [2015] ZAGPPHC 1075.

¹⁹ *Transnet Limited t/a Metrorail and Another v Witter* 2008 (6) SA 549 (SCA).

²⁰ *Passenger Rail Agency of South Africa v Moabelo* [2017] 4 All SA 648 (SCA).

²¹ *Mashongwa* supra para 60.

²² *Mashongwa* supra para 40.

[41] To meet minimum safety standards, the defendant was obliged to ensure that the train did not depart the station with open doors, and that doors remained closed while in motion. By not doing so, the defendant not only exposed the plaintiff to danger but all other commuters that were in the train. In allowing the doors to remain open, the defendant failed in its legal duty towards the plaintiff. Its employees omitted to close the doors, thereby giving rise to negligence and such conduct is not acceptable.²³

[42] In the result, I find that the defendant failed to comply with the safety precaution of keeping train doors closed, and such failure amounts to negligence. In my view, a reasonable organ of State in the defendant's position, owing a public law duty to commuters, would have ensured that the doors were closed to prevent the plaintiff's fall. I find that the reasonable possibility of harm was foreseeable, and the defendant's omission constitutes actionable negligence.

Causation

[43] The next inquiry is whether a causal nexus exists between the defendant's negligent conduct and the plaintiff's injuries; that is harm suffered by the plaintiff.²⁴ The test is whether the harm would nonetheless have ensued even if the omission; namely, the failure to close the train doors while in motion; had not occurred. Put differently, the Court must ask what would probably have happened had the defendant ensured that the train doors were closed during the journey undertaken by the plaintiff.

²³ *Witter* supra para 5.

²⁴ J Neethling, J M Potgieter and P J Visser *Law of Delict* 7 ed (2015) at 125.

[44] Notwithstanding Mr Klaas's insistence that trains do not travel with doors open, the evidence presented proves otherwise. It was established that the incident occurred on a moving train, with the doors open from Cape Town to Nyanga stations. The open doors directly resulted in the plaintiff falling and sustaining injuries to her head, shoulder, and legs. These injuries are connected to the defendant's failure to take preventative measures by keeping the carriage doors closed while the train was in motion.

[45] In my view, had the defendant ensured that the doors were closed, the probabilities indicate that the plaintiff would not have fallen from the train. She would, in all likelihood, have remained safely inside until reaching her destination at Mitchells Plain. Importantly, she would have remained unharmed, as the closed doors would have prevented her fall. The defendant's negligent omission in failing to close the doors, in circumstances where it bore the duty to provide safe passage to the plaintiff and other commuters, is closely connected to the harm suffered. The causal nexus between the omission and the injuries is established. Accordingly, the Court concludes that the defendant is liable to the plaintiff for her loss and therefore negligent.

Contributory negligence and assumption of risk

[46] What remains is whether the defendant contributed to the negligence or her conduct amounted to assumption of risk. The defendant, in its plea, has advanced several defences in which it contends that the plaintiff was either the sole cause of the negligence, or alternatively that she contributed thereto.²⁵ In essence the defendant relies on *volenti non fit injuria* and contributory negligence. *Volenti non fit injuria*, though conceptually distinct from contributory negligence, often

²⁵ Page 19 and 20 of record.

arises in tandem. The essence of the defence *volenti non fit injuria* lies in the voluntary acceptance by the plaintiff of a known and appreciated danger, thereby negating or reducing liability on the part of the defendant. For the defence to succeed, it must be shown that the plaintiff possessed full knowledge of the risk, appreciated its nature and extent, and nonetheless consented to encounter it.

[47] By contrast, contributory negligence under the Apportionment of Damages Act²⁶ requires only that the plaintiff's conduct materially contributed to the harm. In *South African Railways and Harbours v Symington*,²⁷ the court recognised that failure to take reasonable precautions, such as neglecting to wear a seat belt, may constitute contributory negligence if causally linked to the injuries sustained.

[48] Our courts have consistently emphasised that mere awareness of a risk does not suffice; there must be evidence of voluntary acceptance. In *Santam Insurance Co Ltd v Vorster*,²⁸ the Appellate Division held that assumption of risk is not lightly inferred, and the defendant bears the onus of establishing it on a balance of probabilities.

[49] Thus, while contributory negligence apportions liability between the parties, assumption of risk may, in appropriate circumstances, operate as a complete defence. The distinction lies in whether the plaintiff's conduct merely contributed to the harm, or whether it amounted to a conscious and voluntary acceptance of the risk inherent in the defendant's conduct.

[50] It is settled law that for a defence of contributory negligence to succeed, the defendant must adduce evidence, on a balance of probabilities, establishing negligence on the part of the plaintiff, and further that such negligence was

²⁶ Act 34 of 1956.

²⁷ *South African Railways and Harbours v Symington* 1935 AD 37.

²⁸ *Santam Insurance Co Ltd v Vorster* 1973 (4) SA 764 (A).

causally connected to the damages sustained.²⁹ Mere allegation is insufficient; proof is required. The onus accordingly rests upon the defendant to demonstrate both the existence of negligent conduct by the plaintiff and the causal nexus between that conduct and the harm suffered.³⁰

[51] The question of contributory negligence has been addressed by our courts on numerous decisions. In *Fox v RAF*³¹ the court stated that:

‘Where the defendant had in the alternative pleaded contributory negligence and an apportionment, the defendant would have to adduce evidence to establish negligence on the part of the Plaintiff on a balance of probabilities. Also see *Johnson Daniel James v Road Accident Fund* case number 13020/2014 GHC paragraph 17, confirming *Solomon and Another v Musset and Bright Ltd* 1926 AD 427 at 435.’

[52] In addition, where reliance is placed upon the doctrine of *volenti non fit injuria*, the defendant bears the burden of proving that the plaintiff had knowledge of the risk inherent in standing at the open door of a train while it was in motion, that she appreciated the extent of such risk,³² and that she voluntarily consented thereto.

[53] The defendant led no evidence to suggest that the plaintiff either opened the train doors herself or caused them to be opened in any manner. Nor is there evidence establishing that the plaintiff remained in close proximity to the open door. On the contrary, the evidence demonstrates that the environment within the carriage was chaotic, with a group of approximately five men engaged in robbing passengers. To expect any person, under such circumstances, to exercise control over her precise position in relation to the open door is manifestly unreasonable.

²⁹ L T C Harms *Amler's Precedents of Pleadings* 7 ed (2009) at 125.

³⁰ *South British Insurance Co Ltd v Smit* 1962 (3) SA 826 (A).

³¹ *Fox v RAF* [2018] ZAGPPHC 285 para 13.

³² *Lampert v Hefer* 1955 (2) SA 507 (A); *Law of Delict* supra at 178.

In such a situation, it is natural and foreseeable that a passenger would act instinctively to evade the robbers.

[54] Moreover, the evidence establishes that the plaintiff was forcibly pulled when one of the assailants attempted to abscond with her bag. There is no evidence tendered to show that she foresaw the reasonable possibility of falling from the train, or that she appreciated the likelihood of being dragged out in circumstances where the train's doors were open.

[55] In the result, no evidence was led by the defendant which would warrant a finding that contributory negligence was established, nor that the essential elements of the defence of *volenti non fit injuria* were proved. The submissions advanced by the defendant's counsel are accordingly unsubstantiated. Having regard to the totality of the evidence and the conclusions set out above, I am satisfied that the defendant is solely liable for the harm suffered by the plaintiff.

[56] Accordingly, I find that the defendant has failed to discharge the onus resting upon it in respect of the defence of contributory negligence. The evidentiary threshold required to sustain such a defence has not been met, and it must therefore be dismissed. The plaintiff therefore succeeds on the merits of her claim.

Costs

[57] It is trite that costs follow the result, save where exceptional circumstances justify a departure. In the present matter, the postponement of 13 March 2026 was occasioned by the absence of the court file. The defendant, represented by Ms Nharmuravate, was present and prepared to proceed. There is accordingly no basis to visit the defendant with an adverse costs order for a postponement that

was not of their making. In the circumstances, fairness dictates adherence to the general rule, and I see no reason to deviate therefrom. Costs shall therefore follow the result.

Order

[58] In the results, I make the following order:

- (a) The defendant is liable for 100% of the plaintiff's proven damages resulting from the incident of falling from a train on 9 May 2011.
- (b) The defendant is ordered to pay the plaintiff's costs on a party and party scale, including the cost of counsel to be taxed on a Scale B.



S YAKE
ACTING JUDGE OF THE HIGH COURT

Appearances

For the Plaintiff:	SF Mouton
Instructed by:	Boshoff Njokweni Attorneys
For the Defendant:	N Nharmuravate
Instructed by:	Werksman Attorneys