



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

JUDGMENT

Not reportable

Case no: 12528/2016

In the matter between:

YOLANDA BAMBI

Plaintiff

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Defendant

Coram: LOUW AJ

Heard: 16 April 2026 (hearing of testimony) and 20 May 2026 (hearing of argument)

Delivered: 10 September 2026

Summary: Delict - Rail commuter injury - Plaintiff falling from a train through an open door while the train was in motion - Failure to produce a train ticket not decisive - Probabilities favouring plaintiff's version - Prasa liable for plaintiff's proven damages.

ORDER

- 1 The defendant is liable for all the plaintiff's proven damages resulting from the incident of falling from a train on 25 September 2014.
- 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

Louw AJ:

Introduction

[1] The plaintiff, Mr. Yolanda Bambi ('the plaintiff'), instituted a delictual claim against the Passenger Rail Agency of South Africa ('PRASA') for damages arising from injuries allegedly sustained on 25 September 2014 at Esplanade Station in the Western Cape. Mr. Bambi alleges that he fell from a moving train onto the platform while travelling as a passenger from Heideveld Station to Esplanade Station and that, after his fall, he was trampled by disembarking commuters.

[2] As a consequence of the incident, the plaintiff allegedly sustained, inter alia, severe abdominal and kidney injuries necessitating hospitalisation and medical intervention. He claims that the injuries have resulted in various forms of loss and damages, for which he seeks compensation from PRASA.

[3] The plaintiff contends that the incident was caused by the negligence of PRASA and its employees, particularly in permitting the train to travel with open coach doors and in failing to prevent the incident when they could and should have done so. PRASA, in its plea, denied the material allegations made by the plaintiff, including that the incident occurred as alleged and that the plaintiff was a fare-paying passenger on the train on the day in question.

[4] It is common cause that, as a public rail carrier, PRASA owes a legal duty to take reasonable steps to protect its passengers from physical harm while making use of its transport services.¹ PRASA does not deny this duty, but disputes whether it breached that duty and, if so, whether such breach caused the plaintiff's injuries.

[5] The matter proceeded to trial on 16 April 2026 in respect of liability (merits) only, the parties having agreed during the case management process that the issues of liability and quantum be separated in terms of Uniform rule 33(4). The plaintiff testified in support of his claim and called no other witnesses before closing his case. PRASA, in turn, called a single witness, Mr. Thando Klaas, an investigating officer in its employ, after which it

¹ *Mashongwa v Passenger Rail Agency of South Africa* [2015] ZACC 36; 2016 (3) SA 528 (CC) at para 20.

closed its case. The matter was subsequently postponed to 20 May 2026 for argument.

Testimony before court

Plaintiff's case

[6] The plaintiff testified that, on 25 September 2014, he boarded a train at Heideveld station in Cape Town. At the time, he resided in Nyanga and relied on PRASA's rail service as his primary means of transport to and from work. He explained that he boarded the train at Heideveld Station because it was the station situated closest to his home. He testified that he had been employed by HF Plumbing since January 2014 and had travelled by train to his workplace on a daily basis from the commencement of his employment until the date of the incident. According to the plaintiff, he had purchased a monthly train ticket at Heideveld Station, which was valid and authorised his travel on the day of the incident.

[7] The plaintiff boarded the rear coach of the train, being the last carriage. Upon entering the coach, he took up a standing position and observed that there were no PRASA personnel, including security officers or train officials, present in the carriage. He testified that the train doors were closed when the train departed from Heideveld Station and that the train stopped at several stations along the route to allow passengers to embark and disembark. According to the plaintiff, the train became progressively more crowded at each station as additional commuters boarded.

[8] He further testified that after the train departed from Langa Station, the doors of the coach in which he was travelling remained open while the train was in motion. According to him, the doors were still open when the train departed from Ysterplaat Station, being the final station before Esplanade Station. The plaintiff stated that he did not observe any PRASA security personnel either on the platform at Ysterplaat Station or inside the train coach.

[9] As the train approached Esplanade Station and began slowing down in preparation for stopping, commuters in the coach started making their way towards the open doors in anticipation of disembarking. The plaintiff described the passengers as jostling one another in an attempt to position themselves closer to the exits. The plaintiff testified that, as the train entered Esplanade Station, he was pushed by the crowd of commuters towards one of the open doors and was forced out of the carriage onto the platform. After falling, he was trampled by several commuters as they disembarked from the train.

[10] He attempted to stand up, but immediately realised that something was wrong. Nevertheless, he managed to leave Esplanade Station and walk to his workplace in Woodstock, as he ordinarily did. Upon arriving at work, the plaintiff felt unwell and reported the incident to his supervisor. His employer initially provided him with Eno in an attempt to alleviate his discomfort. When his condition failed to improve, he was instructed to return home. His employer provided him with taxi fare for the journey home. The plaintiff testified that, upon arriving at his residence in Nyanga,

he went straight to bed. He was perspiring heavily and, when he later went to the bathroom, he observed blood in his urine.

[11] The plaintiff's mother contacted his uncle, who transported him by motor vehicle to the KTC Day Hospital in Gugulethu. He testified that he was thereafter transferred to Groote Schuur Hospital, where he was diagnosed with internal injuries and remained hospitalised for some time before his discharge. The plaintiff further confirmed that the personal details recorded on the hospital transfer documentation, as well as those reflected in the medical records from Groote Schuur Hospital contained in the witness bundle,² were correctly recorded as his.

[12] During cross-examination, the plaintiff was mainly questioned about the train ticket which he claimed to have used on the day of the incident. He testified that he had purchased the ticket with cash at Heideveld Station and did not receive a receipt when he had purchased the monthly ticket. When asked what had become of the ticket, the plaintiff explained that he had left it in the overalls he was wearing on the day of the incident. He testified that the ticket was either lost or destroyed while he was hospitalised and that it had probably disappeared during the cleaning of his home.

[13] The plaintiff was further questioned by counsel for PRASA as to why he boarded a carriage that was allegedly overcrowded. He disputed that the coach was overcrowded when he boarded, although he acknowledged that no seats were available, which necessitated him standing for the journey. He

² Marked as exhibit A.

explained that the train became progressively more crowded as passengers boarded at the various stations along the route. When asked about the timing of his journey, the plaintiff testified that he had boarded the train at approximately 07h00. Although he was unable to recall the exact time at which he disembarked, he indicated that it was still during the morning peak commuter period.

[14] During cross-examination, the plaintiff was also questioned as to why he had not reported the incident to PRASA personnel at the station. He testified that, at the time, he believed that he was not seriously injured and therefore left the station and proceeded to his place of employment. It was only later, after arriving at work and experiencing worsening symptoms, that he realised the seriousness of his injuries.

[15] The plaintiff was also questioned regarding the number of the train on which he had travelled. He testified that he could not recall the train number and had not observed it on the day of the incident. He was, however, able to state that it was a train travelling on the Khayelitsha line. After cross-examination, the plaintiff closed his case.

PRASA (defendant's case)

[16] PRASA called Mr. Thando Klaas ('Mr. Klaas'), its sole witness, who testified that he is employed by PRASA in the capacity of an investigator. He testified that he investigated the plaintiff's claim after summons had been

served and, pursuant to that investigation, compiled a report which was included in the witness bundle.

[17] Mr. Klaas explained the methodology he followed during his investigation. According to him, he obtained and examined the occurrence book maintained by the Cape Metrorail Operation Control Centre ('CMOCC'), which contained handwritten entries recording incidents reported within the rail network. He testified that the information recorded in the occurrence book was derived from reports received from, amongst others, security personnel, train drivers and train guards. Having examined the records for the relevant date, he found no entry relating to the incident alleged by the plaintiff. He further testified that there was no record of any train door malfunction being reported on the day in question.

[18] Mr. Klaas was critical of the plaintiff's version in several respects. He testified that the plaintiff had not provided the number of the train on which he was allegedly travelling and regarded this omission as significant. He further expressed the view that any person injured at a station would ordinarily report the incident to railway personnel. In this regard, he stated that ticket verifiers stationed on a bridge overlooking Esplanade Station would have been able to observe an incident of the nature described by the plaintiff had it occurred.

[19] Mr. Klaas also testified regarding the operation of train doors. While he accepted that commuters could, on occasion, prevent train doors from closing by placing their feet or other objects in the doorway, he remained

adamant that PRASA trains would not travel whilst their doors were open. He was adamant that any such occurrence would have been recorded and stated that, throughout the period of his employment with PRASA, he had never encountered a recorded instance of a train travelling with its doors open. He further testified that it was not uncommon for commuters to travel without tickets and that such persons, when detected, were generally issued with a fine of R40.

[20] He further testified that PRASA personnel, including ticket verifiers and security officers, were generally deployed on trains. However, he explained that during peak commuting hours, approximately between 05h30 and 09h00, trains were often so crowded that it became difficult for staff to move through the coaches. He also stated that not all trains were staffed by security personnel. According to Mr. Klaas, the last coach of a train would ordinarily have an operator on board whose responsibilities included monitoring the functioning of the train and ensuring that the doors were operating properly and closing as required.

[21] Mr. Klaas further testified that, if the plaintiff had indeed boarded the train at Heideveld Station, the train would already have been heavily occupied, as the route originated in Khayelitsha. He contrasted this with Ysterplaat and Esplanade Stations, which he described as generally less congested stations. According to him, trains travelling from Khayelitsha would typically accumulate large numbers of commuters before reaching Heideveld Station.

[22] Mr. Klaas further testified that PRASA experienced ongoing difficulties with commuters travelling without valid tickets. He stated that, notwithstanding PRASA's access-control measures, some commuters were able to gain entry to stations and board trains without being in possession of a valid ticket.

[23] During cross-examination, Mr. Klaas conceded that not all commuters would necessarily know or be able to identify the number of the train on which they were travelling. He also acknowledged that he was not present at Esplanade Station on the day of the incident and was therefore unable to confirm how many PRASA employees were on duty at the station at the relevant time. When pressed on his earlier assertion that the absence of a record suggested that the incident was unlikely to have occurred, he ultimately stated that he had no comment.

[24] Mr. Klaas further conceded that incidents may occur on trains without being reported. He was also informed that the plaintiff's evidence regarding the purchase and possession of a train ticket had not been challenged in any material respect. In response, Mr. Klaas accepted that, as he had not seen the ticket, he was unable to dispute the plaintiff's evidence in that regard. He further confirmed that PRASA did not issue receipts for train tickets, whether purchased for a single journey or as a monthly pass. Although he maintained that there was no proof that the plaintiff had purchased a ticket, he conceded that it was possible that the plaintiff's explanation, namely that the ticket had been lost whilst he was hospitalised, could be true.

[25] Significantly, Mr. Klaas ultimately conceded that he was not in a position to dispute that the plaintiff had been travelling on the train on the day in question, nor could he positively dispute that the plaintiff had fallen through the open doors of a carriage. Mr. Klaas conceded that security personnel were not always present on station platforms and that there were occasions when no security officers were deployed at a particular platform. His principal dispute related to whether the plaintiff had been in possession of a valid ticket. In advancing that contention, he remarked that the plaintiff was ‘stealing the train’, by which he evidently meant that the plaintiff had travelled without purchasing a ticket.

[26] Mr. Klaas nevertheless remained steadfast in his assertion that PRASA trains do not travel with open doors. When it was put to him that numerous courts in South Africa had dealt with cases involving commuters falling from trains travelling with open doors, he rejected that proposition and maintained that such incidents had never occurred.

[27] This Court posed a number of questions to Mr. Klaas concerning the scope of his investigation and the conclusions he drew therefrom. He confirmed that he had not interviewed any of the PRASA employees who were on duty at Esplanade Station on the day of the alleged incident. His evidence as to what those employees would or would not have observed was therefore based on assumption rather than on information obtained directly from them. He further testified that there were no reports from PRASA personnel indicating that passengers had been travelling unlawfully on the

train or that any individuals had been found hiding between the coaches on the day in question.

[28] In response to further questions from this Court, Mr. Klaas testified that it was difficult, if not impossible, for a commuter to gain access to a train without a valid ticket. He explained that, in the case of the older train fleet, persons travelling unlawfully would sometimes conceal themselves between the coaches and were generally apprehended when attempting to exit the station. According to Mr. Klaas, this was the reason why commuters travelling without tickets would often jump from trains as they slowed down before reaching a station, thereby avoiding detection by PRASA personnel at station exits. On that basis, he expressed the view that the plaintiff had not fallen from the train in the manner alleged but had probably jumped from it before it reached the station. He accepted, however, that this was merely an inference drawn from the circumstances as he understood them and was not based on any direct observation of the incident or independent evidence relating thereto.

[29] This Court also questioned Mr. Klaas regarding the possibility of the older fleet of PRASA trains travelling with open doors. He testified that, on the older trains, commuters were able to prevent doors from closing by placing an object or even a foot in the doorway. He further explained that, unlike the newer train models, the older fleet was not equipped with warning lights or indicators to alert train personnel that doors remained open. As a result, it was possible, at least in principle, for those trains to depart and travel whilst doors remained open. Mr. Klaas also testified that the older

trains were not fitted with emergency mechanisms that could be activated in the event of a train departing with open doors. By contrast, newer train models are equipped with visible warning systems and safety mechanisms designed to detect doors that have not properly closed and to prevent the train from operating under such circumstances.

[30] Following the completion of cross-examination and the questions posed by this Court, Mr. Klaas's evidence came to an end. PRASA indicated that it had no further questions for its witness and thereafter closed its case. The matter was subsequently postponed to 20 May 2026 for the hearing of argument.

Arguments before court

Plaintiff's arguments

[31] Counsel for the plaintiff, Mr. Benade, pointed out that the plaintiff was not cross-examined on the circumstances of the incident itself. Nor was it put to him that the incident had not occurred, that he had not fallen from the train in the manner described, or that the defendant disputed his version of how the incident had taken place.

[32] Counsel for the plaintiff further submitted that the cross-examination was directed largely at casting doubt on the plaintiff's credibility and suggesting that his claim was fraudulent. Counsel argued, however, that notwithstanding extensive and rigorous cross-examination, the plaintiff

remained consistent in all material respects. His evidence that he boarded the train at Heideveld Station, travelled in the rear coach, and was pushed through an open door as commuters jostled to disembark at Esplanade Station was never materially shaken.

[33] Counsel further submitted that the plaintiff's version was both coherent and probable. The plaintiff suffered injuries consistent with a fall from the train and provided a plausible explanation as to how the incident occurred. In the absence of any alternative credible explanation for how the plaintiff came to sustain those injuries, the most probable inference was that he fell from the train through an open door while it was entering Esplanade Station.

[34] It was further argued that the plaintiff had established a prima facie case of negligence, thereby placing an evidentiary burden on PRASA to rebut that case. According to counsel, PRASA could have sought to do so by leading evidence demonstrating that reasonable measures had been taken to ensure that the train did not travel with open doors and that appropriate safety and security measures were in place for commuters on the day in question.

[35] Plaintiff's counsel submitted that PRASA failed to discharge that burden. The only witness called by the defendant was Mr. Klaas, an investigator who was not present when the incident occurred. He had not interviewed any PRASA employees who were on duty at Ysterplaat or Esplanade Stations on the relevant day and was therefore unable to provide

direct evidence contradicting the plaintiff's account. In the result, counsel contended that the plaintiff's version stood largely uncontested and should be accepted.

[36] Plaintiff's counsel argued that PRASA's alleged liability arose from an omission, namely its failure to take reasonable steps to ensure the safety of commuters. In this regard, counsel relied on *Hawekwa Youth Camp and Another v Byrne*,³ where the Supreme Court of Appeal ('the SCA') explained that negligent omissions are actionable only where public and legal policy considerations, informed by constitutional norms, give rise to a legal duty to act.

[37] Counsel argued that the existence of such a legal duty on the part of PRASA is no longer open to debate. Reliance was placed on *Mashongwa*,⁴ where the Constitutional Court reaffirmed that public carriers such as PRASA owe a legal duty to protect passengers from physical harm whilst making use of their transport services. That duty derives not only from the relationship between carrier and passenger, but also from PRASA's public law and constitutional obligations.

[38] Further reliance was placed on *Rail Commuters Action Group and Others v Transnet Ltd t/a Metrorail and Others*,⁵ where the Constitutional Court emphasised the vulnerability of rail commuters and held that Metrorail

³ *Hawekwa Youth Camp and Another v Byrne* [2009] ZASCA 156; 2010 (6) SA 83 (SCA) at 90I-91A.

⁴ *Mashongwa* above fn 1 at para 20.

⁵ *Rail Commuters Action Group and Others v Transnet Ltd t/a Metrorail and Others* [2004] ZACC 20; 2005 (2) SA 359 (CC); 2005 (4) BCLR 301 (CC) at paras 82 and 86.

was under a duty to ensure that reasonable measures were in place to provide for their safety. Counsel submitted that the constitutional obligation resting upon PRASA is therefore well established.

[39] Against that legal background, the plaintiff's counsel contended that the critical question was whether PRASA had adduced evidence of the reasonable measures implemented to ensure the safety of commuters on the train in question. Counsel submitted that no such evidence was forthcoming. The defendant's case was confined to the evidence of Mr. Klaas, who was not a witness to the incident and was unable to testify regarding any safety measures in place on the train or at the relevant stations on the day in question. In those circumstances, counsel argued that PRASA had failed to demonstrate that it had taken reasonable steps to discharge the legal duty resting upon it. He further submitted that it was not incumbent upon the plaintiff to lead evidence of what safety measures PRASA ought to have implemented, particularly where the defendant itself adduced no evidence regarding the measures that were in fact in place.⁶

[40] Plaintiff's counsel submitted that the appropriate test for negligence remains that formulated in *Kruger v Coetzee*,⁷ namely whether a reasonable person in the position of the defendant would have foreseen the reasonable possibility of harm occurring and would have taken reasonable steps to guard against such harm, and whether the defendant failed to take those steps.

⁶ Relying in this regard on *Passenger Rail Agency of South Africa v Mokoena* (5038/2020; 14289/2014) [2021] ZAGPJHC 650 (26 August 2021).

⁷ *Kruger v Coetzee* 1966 (2) SA 428 (A) at 430E-G.

[41] Counsel argued that, on the facts of this matter, the foreseeability of harm was self-evident. The issue was whether PRASA had taken reasonable measures to prevent commuters from being injured by trains travelling with open doors. In this regard, counsel submitted that PRASA failed to adduce any evidence regarding the safety or security measures in place on the train in question or at the stations from which it departed. Reliance was placed on *Passenger Rail*⁸ for the proposition that a commuter who sustains injuries while travelling on a train does not bear the burden of leading evidence concerning the safety measures implemented by PRASA or their reasonableness.

[42] Counsel for the plaintiff further submitted that the plaintiff had discharged the onus of proving, on a balance of probabilities, that the carriage from which he fell was travelling with its doors open. Once that evidence was accepted, PRASA was required to place before this Court evidence demonstrating how it had complied with its constitutional and legal obligations to ensure the safety of commuters. In support of this submission, counsel relied on *Mashongwa*,⁹ where the Constitutional Court emphasised that train doors perform a vital safety function and that the dangers associated with trains travelling with open doors are obvious and well known. The Court also noted that PRASA's own operating procedures prohibit trains from operating with open doors.

⁸ *Passenger Rail* above fn 6 at para 10.

⁹ *Mashongwa* above fn 1 at paras 48 and 49.

[43] Plaintiff's counsel contended that PRASA failed to place any rebuttal evidence before this Court demonstrating what measures had been implemented to prevent trains from operating with open doors or to safeguard commuters on the day in question. The evidence of Mr. Klaas was directed largely at incident reporting procedures and the absence of records relating to the incident. Counsel submitted that such evidence did not address the central issue, namely whether PRASA had taken reasonable steps to prevent the occurrence of the harm suffered by the plaintiff. In those circumstances, PRASA had failed to demonstrate that it had discharged the legal and constitutional obligations resting upon it.

[44] On the issue of causation, the plaintiff's counsel submitted that the plaintiff had established the requisite causal nexus between PRASA's negligent conduct and the injuries he sustained. Counsel referred to *ZA v Smith*,¹⁰ where the SCA restated the well-known 'but-for' test for factual causation, namely whether, but for the defendant's wrongful and negligent omission, the plaintiff's harm would probably not have occurred. The SCA emphasised that the enquiry is a practical, common-sense one that is 'more likely than not' and that a plaintiff is not required to establish causation with absolute certainty.

[45] Counsel argued that factual causation was clearly established. The plaintiff sustained his injuries when he fell from a moving train through an open door. Had the door remained closed, the fall and resulting injuries would probably not have occurred. A direct causal connection therefore

¹⁰ *ZA v Smith* [2015] ZASCA 75; 2015 (4) SA 574 (SCA) at 589D-G.

existed between the alleged negligence and the harm suffered by the plaintiff. There was thus a sufficiently close causal connection between PRASA's negligence and the harm suffered by the plaintiff. PRASA should therefore be held liable for the plaintiff's damages.

Prasa's arguments

[46] Counsel for PRASA, Ms. Masupye, submitted that the plaintiff had failed to prove that he was a fare-paying passenger, having produced neither a train ticket nor any documentary proof thereof. Counsel further relied on the absence of the train number and the lack of any record of the incident in PRASA's official records. It was argued that, because no PRASA employee witnessed the alleged incident, the defendant was only able to call its investigating officer, Mr. Klaas, to testify.

[47] On behalf of PRASA, counsel relied on the evidence of Mr. Klaas that PRASA trains do not travel with open doors and that any door malfunction would ordinarily be reported by the train guard. Counsel further pointed out that the plaintiff himself testified that the train doors were closed when he initially boarded the train and departed from Heideveld Station.

[48] Counsel also referred to Mr. Klaas's evidence that PRASA experiences problems with commuters travelling without tickets and that such commuters often disembark from trains before they come to a complete stop in order to avoid detection at ticket control points. In this regard, it was

submitted that the plaintiff was probably an unlawful commuter and that his version of the incident should therefore be viewed with caution.

[49] On behalf of PRASA, counsel submitted that the proper approach to the resolution of the factual disputes was that articulated in *Stellenbosch Farmers' Winery Group Ltd and Another v Martell & Cie SA and Others*.¹¹ In that matter, the SCA held that a court must evaluate the credibility and reliability of the witnesses, together with the probabilities of the competing versions, before determining whether the party bearing the onus has discharged it. Counsel further relied on *National Employers' General Insurance Co Ltd v Jagers*¹² for the proposition that, where mutually destructive versions exist, a plaintiff can succeed only if the court is satisfied on a balance of probabilities that his version is true and that the defendant's version falls to be rejected.

[50] Applying those principles, PRASA's counsel argued that the plaintiff had failed to discharge the onus resting upon him. In particular, it was submitted that the absence of a train ticket, receipt, or other documentary proof that the plaintiff was a fare-paying passenger undermined the credibility and reliability of his version. Counsel therefore contended that the plaintiff had failed to establish, on a balance of probabilities, that his version should be preferred.

¹¹ *Stellenbosch Farmers' Winery Group Ltd and Another v Martell & Cie SA and Others* [2002] ZASCA 98; 2003 (1) SA 11 (SCA).

¹² *National Employers' General Insurance Co Ltd v Jagers* 1984 (4) SA 437 (E) at 440D-G.

[51] PRASA's counsel submitted that the central issue was whether PRASA owed the plaintiff a legal duty of care if he was not lawfully entitled to be on the train. It was argued that, should this Court find that the plaintiff was travelling without a valid ticket, he was not a lawful commuter and could not rely on any duty owed by PRASA to fare-paying passengers. In support of this contention, counsel relied on *Bhiya v Passenger Rail Agency of South Africa*,¹³ where the Gauteng Division, Pretoria, held that a commuter travelling without a valid ticket was not entitled to rely on the legal duty ordinarily owed by PRASA to its passengers. Counsel further relied on *Farmer v Robinson Gold Mining Co Ltd*,¹⁴ where the Appellate Division considered the circumstances under which a landowner may be held liable for injuries sustained by a trespasser. The court there held that liability depends upon the existence of negligence and that, in determining whether a duty of care exists, the relationship between the parties is an important consideration. Counsel emphasised that the reason a landowner is generally not liable to a trespasser is not because a trespasser forfeits all legal protection, but because the landowner cannot ordinarily be expected to anticipate the presence of a person who is unlawfully on the property.

[52] Counsel submitted that a commuter is obliged to purchase a ticket before making use of PRASA's services and that a carrier and passenger consequently have reciprocal rights and obligations. It was argued that public policy considerations militate against imposing liability on PRASA where a person travels without paying the required fare and in breach of the applicable statutory provisions. On that basis, counsel contended that, if the

¹³ *Bhiya v Passenger Rail Agency of South Africa* (72237/2019) [2023] ZAGPPHC 35 (26 January 2023).

¹⁴ *Farmer v Robinson Gold Mining Co Ltd* 1917 AD 501 at 522.

plaintiff failed to prove that he possessed a valid ticket, his claim ought to fail.

Supplementary note requested by this Court

[53] As mentioned, during argument, PRASA relied on *Bhiya*¹⁵ in support of its contention that the plaintiff's failure to prove possession of a valid train ticket was fatal to his claim, as PRASA owed no legal duty to a person who had no lawful right to be on the train. Given the significance of that issue, and its potential dispositive effect on the matter, this Court directed the parties to file supplementary notes addressing whether, assuming all the other elements of delictual liability had been established, the absence of proof of a valid train ticket would nevertheless defeat the plaintiff's claim.

[54] In his supplementary note, plaintiff's counsel submitted that, although *Bhiya* supported the defendant's argument, that decision should not be followed. He pointed out that leave to appeal against the whole judgment had subsequently been granted in *Bhiya v Passengar Rail Agency of South Africa*¹⁶ to the SCA. Counsel further relied on *MBM v Passenger Rail Agency of South Africa*,¹⁷ where the court expressly rejected the proposition that PRASA's duty of care ceases merely because a commuter is unable to produce a valid ticket.¹⁸ Counsel also referred to the article by Boonzaier

¹⁵ *Bhiya* above fn 13.

¹⁶ *Bhiya v Passengar Rail Agency of South Africa* (72237/2019) [2023] ZAGPPHC 1873 (2 November 2023).

¹⁷ *MBM v Passenger Rail Agency of South Africa* (A2024/122198) [2026] ZAGPJHC 488 (12 May 2026) at para 21.

¹⁸ *MBM* above fn 17 at para 21 Wilson J (with Wentzel J concurring) said:

and Le Roux¹⁹ in which the authors criticised the reasoning in *Bhiya*²⁰ and argued that the presence of ticketless passengers on PRASA's trains is reasonably foreseeable and that the absence of a ticket should not, without more, defeat a claim where the remaining requirements for delictual liability have been established. Counsel accordingly submitted that, even if this Court were to find that the plaintiff failed to prove possession of a valid ticket, PRASA would not be absolved of its legal duty to take reasonable measures to ensure the safety of commuters and the plaintiff's claim should nevertheless succeed if the remaining elements of liability were proved.

Issues for determination

[55] The principal issues for determination are whether the plaintiff was a lawful passenger on the train and, if not, whether the absence of proof of a valid ticket is fatal to his claim; whether the train travelled with its doors open while in motion, thereby giving rise to a *prima facie* inference of negligence on the part of PRASA; and whether any such negligence was causally connected to the plaintiff's alleged fall and resultant injuries. This necessarily requires a determination of whether PRASA's legal duty to ensure the safety of commuters is dependent upon proof of a valid ticket.

'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.'

¹⁹ L Boonzaier and C Le Roux 'Delictual liability and the stow-away plaintiff' (2024) 141(3) *Journal of South African Law* 600-611 while relying on their arguments set out specifically at 607-608 and 611.

²⁰ *Bhiya* above fn 13.

Discussion and legal principles

Evaluation of the testimony

[56] Mr. Thando Klaas was the sole witness for PRASA. His evidence was largely procedural in nature and did not materially assist in resolving the central factual dispute. He was not a witness to the incident and his testimony was based primarily on his subsequent investigation, the contents of records consulted by him and PRASA's standard operating procedures. He candidly accepted that he was not present on the train or at Esplanade Station on the day in question and could not dispute from personal knowledge that the plaintiff was travelling on the train, that an incident occurred, or that the plaintiff fell from the train.

[57] The plaintiff, by contrast, testified first-hand about the events giving rise to his injuries. Having observed the plaintiff during his testimony and under cross-examination, I found him to be a satisfactory witness. His version remained consistent in all material respects. Despite cross-examination, his evidence that he boarded the train at Heideveld Station, travelled towards Esplanade Station, and fell from the train after being pushed towards an open doorway by commuters was not materially shaken.

[58] Importantly, a number of critical aspects of the plaintiff's evidence were never seriously challenged. It was not put to him that he was not on the train. It was not put to him that no incident occurred. It was not put to him that his injuries were sustained elsewhere. Nor was it put to him that he

fabricated the incident. The focus of the defendant's case was overwhelmingly directed at whether the plaintiff possessed a valid train ticket and whether he was therefore lawfully entitled to be on the train.

[59] The plaintiff's explanation that he did not report the incident because he initially believed he was uninjured is, in my view, entirely plausible. His evidence that the seriousness of his injuries only became apparent later in the day was not contested during cross-examination and provides a reasonable explanation for his failure to make an immediate report.

[60] The documentary evidence also provides significant support for the plaintiff's version. The various medical records and hospital documentation in the witness bundle consistently record that the plaintiff sustained injuries arising from a fall from a moving train. While such records do not constitute direct proof of the precise mechanism of the incident, the consistency with which the incident is described across the documentation materially strengthens the plaintiff's account and diminishes the likelihood that the incident was subsequently fabricated.

[61] Notably, Mr. Klaas accepted that incidents can occur on trains without being reported and that the absence of an entry in the occurrence book does not necessarily establish that an incident never happened. He further accepted that he had not interviewed the PRASA employees who were on duty at Esplanade Station on the day concerned. The conclusions he sought to draw from the absence of records were therefore based on inference rather than direct evidence.

[62] Mr. Klaas also sought to attribute the incident to unlawful commuters who allegedly jump from trains before reaching stations. However, he ultimately accepted that this was merely speculation on his part. There was no evidence that the plaintiff had been found hiding between train coaches, no report that he had been observed travelling unlawfully, and no evidence that any PRASA official encountered him attempting to evade ticket controls.

[63] Of considerable importance was Mr. Klaas's response to questions posed by this Court. He testified that it was generally more difficult to gain entry to a station and train without a valid ticket than it was to exit a station without one. That concession materially undermines the defendant's suggestion that the plaintiff was probably an unlawful commuter. Indeed, if unlawful entry was difficult and no evidence existed that the plaintiff had evaded access controls, the probabilities support the inference that he entered the station through the ordinary channels available to fare-paying commuters.

[64] When the evidence is evaluated in accordance with the approach set out in *Stellenbosch Farmers*,²¹ namely by considering credibility, reliability and probabilities, the balance of probabilities favours the plaintiff. The plaintiff presented a coherent, consistent and inherently probable account which is supported by the contemporaneous medical records. By contrast, PRASA's defence rested substantially on generalised evidence concerning

²¹ *Stellenbosch Farmers* above fn 11.

procedures, the difficulties posed by ticketless commuters, and assumptions drawn from the absence of records. Those considerations do not displace the probabilities arising from the plaintiff's evidence. I accordingly accept the plaintiff's version where it conflicts with the speculative inferences advanced by Mr. Klaas.

[65] The plaintiff explained that the monthly ticket had been left in the overalls he was wearing on the day of the incident and was lost or discarded while he was hospitalised. That explanation was not meaningfully challenged in cross-examination, nor was it put to him that he had never purchased a ticket. Mr. Klaas was likewise unable to dispute the plaintiff's evidence and conceded that his explanation could be true.

[66] In my view, the plaintiff's explanation is a plausible one. The plaintiff sustained serious injuries and was hospitalised for some time. In those circumstances, it is entirely probable that a paper monthly ticket kept in work clothing could have been lost or discarded. That probability is enhanced by the undisputed evidence that PRASA did not issue receipts for monthly train tickets, leaving a commuter who had misplaced such a ticket without any independent documentary means of proving its purchase.

Valid train ticket

[67] A considerable portion of the defendant's case was devoted to the contention that the plaintiff failed to prove that he was in possession of a valid train ticket on the day of the incident. While the existence of a valid ticket may constitute persuasive evidence that a person was a lawful passenger, it is not, in my view, dispositive of the present enquiry. Guidance in this regard is found in the recent decision of *Barnabas v Passenger Rail Agency of South Africa*²² in this Division. In that matter, Yake AJ considered the significance of a passenger's failure to produce a valid train ticket when pursuing a claim against PRASA and stated the following:²³

'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.' (My emphasis.)

[68] I respectfully agree with that reasoning. The passage makes clear that the possession of a valid ticket may serve as prima facie proof of lawful travel and contractual entitlement, but it is not a prerequisite for a successful

²² *Barnabas v Passenger Rail Agency of South Africa* (2758/2014) [2026] ZAWCHC 450 (26 August 2026).

²³ *Barnabas* above fn 22 at para 18.

delictual claim against PRASA. The enquiry remains whether, on the totality of the evidence and probabilities, the plaintiff has established the facts necessary to sustain his cause of action. The absence of a ticket is therefore but one factor to be weighed in the assessment of the evidence and cannot, without more, be determinative of liability.

[69] The importance of that enquiry should not be understated. Were the absence of a ticket to be regarded as irrelevant, or were liability to be determined solely on the uncorroborated say-so of a claimant, courts and public carriers such as PRASA would be vulnerable to unfounded and opportunistic claims. Equally, to treat the absence of a ticket as an absolute bar to recovery would undermine the constitutional and delictual duties resting upon public carriers. The proper approach therefore lies in a careful evaluation of the totality of the evidence, the credibility and reliability of the witnesses, and the probabilities emerging from the facts of the particular case. It is only through such an assessment that a court can distinguish between genuine claims and those lacking merit.

[70] In *Barnabas*,²⁴ Yake AJ further recognised that South African law imposes upon common carriers a duty of care which exists independently of any contractual relationship between the carrier and the injured person. In reaching that conclusion, she relied on *Marbe NO v Passenger Rail Agency of South Africa*,²⁵ another decision of this Division, in which the court held that the possession of a valid train ticket is not a prerequisite for the

²⁴ *Barnaba* above fn 22.

²⁵ *Marbe NO v Passenger Rail Agency of South Africa* (12062/2020) [2026] ZAWCHC 43 (29 January 2026) at paras 69-74.

imposition of liability on PRASA. Reliance was also placed on *Mashongwa*²⁶ in which the Constitutional Court emphasised that PRASA bears a positive constitutional duty, arising from section 12 of the Constitution, to take reasonable measures to protect passengers from foreseeable harm while making use of its services.²⁷ Similar principles were articulated in *Rail Commuters*,²⁸ where the Constitutional Court underscored the public law obligations resting upon rail operators to ensure the safety of rail commuters.

[71] The duty imposed upon PRASA arises from the nature of its functions as a public carrier entrusted with the safe conveyance of members of the public. It is a duty grounded not only in the law of delict but also in constitutional norms. As the SCA observed in *Shabalala v Metrorail*,²⁹ public carriers owe commuters a legal duty to take reasonable measures to protect them from physical harm. Consequently, although proof of a valid ticket may strengthen a plaintiff's case by demonstrating lawful travel, the absence of such proof does not, without more, absolve PRASA of liability. The true enquiry is whether PRASA breached the duty of care resting upon it and whether that breach caused the plaintiff's injuries. To elevate the absence of a ticket into a complete defence would be inconsistent with the constitutional and delictual principles articulated in the authorities referenced above.

²⁶ *Mashongwa* above fn 1.

²⁷ *Barnabas* above fn 22 at para 23 and 27.

²⁸ *Rail Commuters* above fn 5 at paras 82-85.

²⁹ *Shabalala v Metrorail* 2008 (3) SA 142 (SCA) at para 7.

[72] In the present matter, the plaintiff testified that he purchased a monthly ticket at Heideveld Station and used that ticket to travel on the day of the incident. His evidence in this regard was not materially challenged. Mr. Klaas accepted that PRASA did not issue receipts for monthly tickets and conceded that the plaintiff's explanation that the ticket was lost while he was hospitalised could be true. He was unable positively to dispute either the purchase or possession of the ticket.

[73] Moreover, the probabilities do not favour the defendant's contention that the plaintiff was unlawfully travelling on the train. As already indicated, Mr. Klaas conceded that it was generally more difficult to enter a station and gain access to a train unlawfully than it was to exit a station without a valid ticket. There was further no evidence that the plaintiff had been apprehended, observed evading access control measures, or found hiding between train coaches. No report existed of any ticketless commuter being detected on the train in question. These are important considerations when assessing the probabilities.

[74] PRASA's evidence further established that ticketless travel was regarded as a significant problem within its rail network. However, beyond identifying the existence of that problem, no evidence was placed before this Court regarding what reasonable measures were implemented to address it on the train and stations relevant to this matter. The existence of a systemic problem cannot, without more, justify an inference that a particular commuter was necessarily travelling unlawfully.

[75] I am mindful that PRASA relied heavily on *Bhiya*³⁰ in support of its argument that the absence of proof of a valid ticket is fatal to the plaintiff's claim. I do not consider myself bound by that decision. Significantly, leave to appeal to the SCA was granted in *Bhiya*.³¹ While the granting of leave to appeal does not itself establish that the judgment is incorrect, it does indicate that another court considered the issues raised therein sufficiently debatable to warrant reconsideration. The academic criticism levelled against *Bhiya*³² by Boonzaier and Le Roux resonates with many of the concerns raised in the present matter. Further support for that view is found in the judgment of *MBM*,³³ where the Gauteng Division, Johannesburg, rejected the proposition that PRASA's duty of care falls away merely because a commuter cannot produce a valid ticket.

[76] I respectfully align myself with the reasoning in *Barnabas* and *MBM*. PRASA's constitutional and delictual duty to take reasonable measures to safeguard commuters cannot depend solely on whether a ticket is subsequently produced in litigation many years after an incident occurred. In any event, on the facts of this case, I am satisfied that the probabilities favour a finding that the plaintiff was a lawful passenger and that he was, more probably than not, in possession of a valid ticket when he commenced his journey.

³⁰ *Bhiya* above fn 13.

³¹ *Bhiya* above fn 16.

³² *Bhiya* above fn 13.

³³ *MBM* above fn 17.

Trains travelling with open doors

[77] In *Barnabas*,³⁴ Yake AJ was confronted with evidence strikingly similar to that presented in the matter before me. Coincidentally, Mr. Klaas also testified on behalf of PRASA in that case. There, as here, he maintained that PRASA trains do not operate with their doors open while in motion and further contended that any defect or malfunction relating to a train door would have been recorded in the relevant fault register. Yake AJ was, however, not persuaded by this evidence. She observed that Mr. Klaas's testimony was based on a document which he had not authored and found his contention to be far-fetched.³⁵ Yake AJ took judicial notice of the fact that trains do, from time to time, travel while commuters are standing at open doors. She also held that Mr. Klaas's assertions were not supported by the evidence before her, nor by the numerous judgments delivered against PRASA in which courts have considered similar incidents.³⁶

[78] Yake AJ further referred to the following consistent body of authority recognising the dangers associated with trains operating with open doors whilst in motion.³⁷ In *Chauke v Passenger Rail Agency of South Africa*,³⁸ with reference to *Transnet Ltd t/a Metrorail and Another v Witter*,³⁹ the court reaffirmed that the operation of a train with open doors while in motion constitutes negligence. In *Transnet v Witter*, the SCA recognised the

³⁴ *Barnabas* above fn 22.

³⁵ *Barnabas* above fn 22 at para 37.

³⁶ *Ibid.*

³⁷ *Barnabas* above fn 22 at para 39.

³⁸ *Chauke v Passenger Rail Agency of South Africa* (38743/2015) [2015] ZAGPPHC 1075 (9 December 2015).

³⁹ *Transnet Ltd t/a Metrorail and Another v Witter* [2008] ZASCA 95; 2008 (6) SA 549 (SCA); [2009] 1 All SA 164 (SCA).

obvious danger posed to commuters when train doors remain open during travel and affirmed the duty resting upon rail operators to take reasonable measures to prevent foreseeable harm.⁴⁰ Similarly, in *Passenger Rail Agency of South Africa v Moabelo*,⁴¹ the SCA held that an open train door constitutes a source of potential danger whilst a train is in motion and that the risk created thereby extends to every commuter travelling on the train.

[79] These authorities correctly demonstrate that courts have repeatedly recognised both the foreseeability of harm arising from open train doors and the corresponding duty resting upon PRASA to take reasonable measures to prevent such harm. Against that backdrop, Mr. Klaas's evidence that PRASA trains simply do not operate with open doors whilst in motion must be approached with caution. In my view, the position may differ depending on the type and age of the train involved.

[80] Both *Barnabas*⁴² and the present matter concerned older train carriages. The reasoning and findings in *Barnabas* lend support to the conclusion reached in the present matter. During questioning by this Court, Mr. Klaas accepted that the older fleet of trains differed materially from the newer trains presently operated by PRASA. He explained that older trains were not equipped with warning systems indicating that doors remained open and were not fitted with safety mechanisms preventing operation when doors failed to close. He further accepted that commuters were capable of preventing the doors from closing by inserting an object or even a foot into

⁴⁰ *Transnet v Witter* above fn 39.

⁴¹ *Passenger Rail Agency of South Africa v Moabelo* [2017] ZASCA 144; [2017] 4 All SA 648 (SCA).

⁴² *Barnabas* above fn 22.

the doorway. The newer models, by contrast, provide visible indications when doors are not properly closed.

[81] In those circumstances, it is neither improbable nor far-fetched to conclude that older trains could and did, from time to time, travel whilst their doors remained open. Such a conclusion accords not only with the evidence presented in this matter, but also with the factual findings made in numerous reported judgments involving PRASA's older train fleet. A court must therefore be cautious of accepting a blanket proposition that PRASA trains did not travel with open doors, particularly where the evidence demonstrates that the older trains lacked the safeguards and warning systems found in their newer counterparts.

[82] Those concessions are of considerable significance. They demonstrate that the broad proposition advanced by PRASA, namely that its trains could not travel with open doors, cannot be sustained in relation to the older fleet. Indeed, Mr. Klaas ultimately accepted that such trains could, in principle, depart and travel while doors remained open.

[83] The plaintiff's evidence that the doors remained open after Langa Station and continued to be open as the train approached Esplanade Station is therefore not only possible but entirely consistent with the evidence ultimately given by PRASA's own witness. Furthermore, no direct evidence was led by PRASA from the train driver, train guard, coach operator or any station official who could testify regarding the condition of the doors on the train concerned.

[84] I therefore find, on a balance of probabilities, that the carriage doors were open while the train was in motion and remained open as the train entered Esplanade Station. The plaintiff's fall occurred when commuters moving towards those open doors pushed and jostled one another in preparation for disembarking. That risk was plainly foreseeable. Had the doors remained closed while the train was moving, the plaintiff would not have been exposed to the danger that ultimately materialised.

[85] The operation of a train with open doors while in motion constitutes negligence for the reasons articulated in *Mashongwa*,⁴³ *Transnet v Witter*,⁴⁴ *Moabelo*⁴⁵ and most recently *Barnabas*.⁴⁶ Once it is accepted that the train travelled with open doors and that the plaintiff fell through one of those doors, the causal connection between PRASA's omission and the plaintiff's injuries is readily established.

Conclusion on the issues for determination

[86] Having regard to the totality of the evidence, I am satisfied that the plaintiff has discharged the onus resting upon him for a few reasons. First, the probabilities favour a finding that the plaintiff was a lawful passenger travelling on the train on the morning of 25 September 2014 and that he was, more probably than not, in possession of a valid train ticket. Second, even if

⁴³ *Mashongwa* above fn 1.

⁴⁴ *Transnet v Witter* above fn 39.

⁴⁵ *Moabelo* above fn 41.

⁴⁶ *Barnabas* above fn 22.

I am wrong in concluding that the plaintiff was probably in possession of a valid ticket, that would not be determinative of the matter. I would nevertheless follow the reasoning in *Barnabas*,⁴⁷ *Marbe*⁴⁸ and *MBM*⁴⁹ and find that the absence of proof of a valid ticket does not, in itself, absolve PRASA of the constitutional and delictual duties resting upon it.

[87] Third, I find that the train travelled with its doors open whilst in motion and that the plaintiff was pushed through an open doorway as the train entered Esplanade Station. Fourth, the operation of the train with open doors constituted negligent conduct on the part of PRASA. No evidence was led demonstrating what reasonable measures were in place to prevent such an occurrence or to address the well-known dangers associated with open train doors.

[88] Finally, the plaintiff has established the requisite causal connection between PRASA's negligence and the injuries he sustained. But for the train travelling with open doors, the plaintiff would not have fallen from the carriage and suffered the injuries reflected in the medical records.

[89] Accordingly, when the principles articulated in *Barnabas*⁵⁰ are applied to the facts of this matter, the plaintiff has established his claim on a balance of probabilities. It follows that PRASA is liable for the plaintiff's proven damages arising from the incident of 25 September 2014.

⁴⁷ *Barnabas* above fn 22.

⁴⁸ *Marbe* above fn 25.

⁴⁹ *MBM* above fn 11.

⁵⁰ *Barnabas* above fn 22.

Costs

[90] Both parties sought a costs order in their favour on Scale B as between party and party. It is a well-established principle that costs ordinarily follow the result, absent circumstances warranting a departure from that general rule. No such circumstances arise in the present matter. In the exercise of my discretion, I am satisfied that the interests of justice and fairness are best served by adhering to the ordinary rule. Costs should therefore follow the result and be awarded on the Scale B party and party scale.

Order

[91] The following order is made:

- 1 The defendant is liable for all the plaintiff's proven damages resulting from the incident of falling from a train on 25 September 2014.
- 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.

M LOUW
ACTING JUDGE OF THE HIGH COURT

Appearances

For plaintiff: Adv. E Benade

Instructed by: Adendorff Attorneys Inc, Cape Town

For respondent: Adv. K Masupye

Instructed by: José & Associates, Cape Town