



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 53027/2019

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES /NO	
(2) OF INTEREST TO OTHERS JUDGES: YES /NO	
(3) REVISED	
8/9/2026 DATE	 SIGNATURE

In the matter between:

MNCUBE MBENI CELENKOSINI

PLAINTIFF

and

PRASA

DEFENDANT

This order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court, and is submitted electronically to the Parties/their legal representatives by e-mail. The Order is further uploaded to the electronic file of this matter on Caselines by the Judge or his secretary. The date of this Order is deemed to be 8/9/2026.

JUDGMENT

LEDWABA JP

INTRODUCTION

[1] The plaintiff instituted an action against the defendant claiming damages in the amount of R2 600 000. The application for separation of the issues on merits and quantum was not opposed, and I ruled that the matter would proceed on merits only.

[2] The plaintiff testified and closed his case without calling any witnesses. The defendant's counsel also closed the defendant's case without calling any witnesses.

[3] In terms of the plaintiff's amended particulars of claim, the plaintiff alleges that he was pushed out of a moving train by passengers who were jostling for space in the overcrowded train. The doors of the train were allegedly open while the train was in motion.

SUMMARY OF PLAINTIFF'S EVIDENCE

[4] On 27 February 2019, at about 17:00, he boarded a train at Knight station and was going to Tembisa. There were no available seats, the train was full, and he was standing holding the belts hanging from the ceiling of the train to balance himself about one metre from the door. The plaintiff alleges that the doors of the train were open when the train was in motion.

[5] The plaintiff described a commotion among passengers, characterized as a fight or pushing, which caused him to lose grip of the belt and fall from the train. As a result of the fall, the plaintiff lost consciousness and was admitted to hospital. He regained consciousness the following day.

[6] During cross-examination, the plaintiff was asked why it was alleged in the particulars of claim that he was pushed out of a moving train by a passenger, and in his evidence in chief, he said there was a fight on the train. He responded that there was a commotion in the train.

[7] He testified that he boarded the train at 17:00 despite overcrowding because he needed to collect medication and noted the presence of a belt to hold onto to balance himself in the train.

[8] The plaintiff further clarified that the alleged altercation occurred after the train departed from Ravenslip Station, the station following Knight Station.

EVALUATION OF THE EVIDENCE

[9] It is common cause between the parties that:

- 9.1. The plaintiff was a passenger in the train, and he had a valid ticket.
- 9.2. The train was full, and the plaintiff held the belt of the roof to balance himself as he was standing.
- 9.3. The train was in motion, and the doors thereof were open.
- 9.4. There was some commotion and jostling in the train.
- 9.5. The plaintiff was admitted to the hospital on 27 February 2019.

[10] The main issue to be determined is whether the defendant's negligence was the sole cause of the damages suffered by the plaintiff and/or if there was contributory negligence on the part of the plaintiff.

CONTRIBUTORY NEGLIGENCE

[11] The defendant did not lead evidence. In relation to contributory negligence, it is trite that the defendant bears the onus of proving on a balance of probabilities, that the plaintiff contributed to his own injuries. This is confirmed in section 1 (1)(a) of the Apportionment of Damages Act.¹

[12] The evidence demonstrates that the plaintiff possessed a valid ticket and was therefore a lawfully passenger on the train. He travelled on an overcrowded train of and used the belt attached to the roof of the carriage to maintain balance, which was its intended purpose for standing passengers. The plaintiff fell from the moving train when a commotion amongst passengers caused him to lose his grip and be pushed towards the open doorway. Had the doors been closed, the probability of the plaintiff falling from the train would have been substantially reduced or eliminated.

¹ 34 of 1956.

[13] The defence made the submissions that the contributory negligence is based on the fact that the plaintiff could have taken another train due it being overcrowded. The defence further submitted that:

“...this person was someone who was taking this train on a daily basis because he had a monthly ticket and he is familiar with the running of the trains that follow each other.”

[14] The court questioned the counsel for the defendant as to whether there was any evidence that another train would have been available. Counsel conceded that no such evidence existed.

[15] The Plaintiff’s counsel submitted that PRASA has a duty to manage the state of overcrowding, and this principle is supported by *Alfred v Passenger Rail Agency*² wherein Manamela AJ, as he then was, stated:

“The question is, what is there for the plaintiff to do when a train is running with open doors and is overcrowded. I am of the view that if there is anyone to rectify this it would only be the Defendant, I support the view by AJ Pangarker in *Maphela v Passengers Rail Agency of South Africa*, that –

‘In my view, all that was required of the defendant was to comply with its own operating instructions. Yet, the defendant failed to do so and operated its train the Mutual to Nyanga stations with its carriage doors open; put another way, the defendant’s employees omitted to close the train doors, and such conduct is not acceptable. In allowing the train doors to be and remain open while the train was in motion, the defendant failed in its legal duty towards the plaintiff as a commuter. The resultant finding is that the defendant failed to ensure that the safety precaution (closing the train doors) was complied with and such failure amounts to negligence on its part. A reasonable organ of state in the defendant’s position, which owes a public law duty to commuters, would have ensured that the train doors were kept closed to prevent the plaintiff’s fall or slip from the train onto the railway tracks. Thus, the reasonable possibility of the plaintiff, a commuter, falling from the packet, moving train whilst the doors were open, was foreseeable.’”

² (88925/2019) [2025] ZAGPPHC 251 (12 March 2025) at paragraph 31.

[16] The defence admitted to this duty and further stated that even if there are no personnel to regulate the overcrowding, the passengers themselves must make a judgment call of whether it is safe to board the train or not. This appears to raise the defence of *volenti non fit iniuria*.

[17] In *Y v PRASA*,³ Strydom AJ stated the following:

“In all matters that I had regarded this defence was linked to instances where commuters alighted or disembarked from a moving train through open train doors.

The essential elements that the Defendant must prove are expressed in the well-known dictum of Innes CJ in Waring and Gillow Ltd v Sherborne:

‘It must be clearly shown that the risk (of injury) was known that it was realized, and that it was voluntarily undertaken. Knowledge, appreciation, consent – these are the essential elements, but knowledge does not invariably imply appreciation, and both together are not necessarily equivalent to consent.’

The prejudiced person should be intellectually mature enough to appreciate the effect of his actions. The test to establish *volenti* is a subjective one. I am of the view that where a defendant embarks on a superficial enquiry into what the plaintiff’s knowledge was, his appreciation of the risk/s and to what he consented to that it would not satisfy the requirements of *volenti*.”

[18] Having regard to the decided cases it can be inferred that it is not for the passenger to navigate overcrowding in a train but for PRASA to exercise its duty of care to safeguard passengers on the trains.

[19] In the matter of *Chauke v Passenger Rail Agency of South Africa*,⁴ with reference to *Transnet Limited t/a Metrorail and Another v Witter*,⁵ the court confirmed that a train moving with open doors constitutes negligence.

³ (25598/2016) [2017] ZAGPJHC 434 (8 September 2017) at paras 5-7.

⁴ [2015] ZAGPPHC 1075.

⁵ 2008 (6) SA 549 (SCA).

[20] The defendant elected not to adduce evidence. Consequently, the plaintiff's version concerning the circumstances of the incident stands largely uncontested. While the plaintiff bore the overall onus of proving negligence, the facts that the train was overcrowded and that its doors were open while in motion were not disputed. These facts establish a basis for negligence as recognised in numerous decisions involving PRASA.

Conclusion

[20] Having carefully considered the evidence and the relevant authorities, I find that the plaintiff has established on a balance of probabilities that the defendants were negligent in operating the train with its doors open while in motion was the cause of the plaintiff's fall and resultant injuries.

[21] The defendant has failed to discharge the onus to prove contributory negligence or voluntary assumption of risk by the plaintiff. Accordingly, there is no basis to reduce or exclude the defendant's liability on these grounds.

[22] I am satisfied that the plaintiff has established, on a balance of probabilities, that the defendant's negligence caused the incident and the injuries sustained by him. The plaintiff is therefore entitled to succeed on the merits of the claim.

ORDER

[23] I make the following order:

1. The defendant is liable for 100% of the plaintiff's proven or agreed damages arising from the incident of 27 February 2019.
2. The issue of quantum is postponed sine die.
3. The costs of the merits, including the costs of counsel are awarded to the plaintiff.
4. The Registrar is directed to enrol the matter for a quantum hearing upon request by either party.

A P EDWABA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Matter heard: 3 March 2025

Delivered:

APPEARANCES:

For the Applicants:

Adv N. Makhani instructed
by Rapfumbedzani Attorneys

For the First Respondent:

Adv T M Ngoepe instructed
by Dabishi Nthambeleni Attorneys Inc