

**REPUBLIC OF SOUTH AFRICA**  
  
**IN THE HIGH COURT OF SOUTH AFRICA**  
**GAUTENG LOCAL DIVISION, JOHANNESBURG**

**CASE NUMBER: 2019/13557**

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED

In the matter between:

**THABANG NKOSANA MOTLOUNG**

Plaintiff

and

**PASSENGER RAIL AGENCY OF SOUTH AFRICA**

Defendant

***Delivered:** This judgment was handed down electronically by circulation to the parties and/or their legal representatives by email, and by uploading same onto CaseLines. The date and time for hand-down is deemed to be have been on 16 May 2022.*

**JUDGMENT**

**STRIJDOM AJ:**

**INTRODUCTION**

[1] This is a delictual claim for damages brought by the plaintiff as a result of injuries he sustained on the 17<sup>th</sup> of November 2018 when he was a passenger on a train near Ennerdale train station.

[2] The trial proceeded on the issue of the defendant's liability to compensate the plaintiff for the injuries he sustained in the incident only in respect of the merits.

## **PLAINTIFF'S EVIDENCE**

[3] The plaintiff gave evidence that during November 2018 he was employed at Lenasia ("Lenz") "working as a car guard and car washer."

[4] He testified that during the time of the incident he was resident in Orange Farm and commuted between his place of work by making use of the defendants' trains.

[5] The plaintiff testified that he purchased a monthly train ticket at Lenz train station at about 06:30 for the month of November 2018. He bought the ticket on the 1<sup>st</sup> of November 2018. He had been using the defendant's train network for approximately one year and a few months.

[6] The plaintiff further testified that on the 17<sup>th</sup> of November 2018 he "knocked off" from work in the afternoon and went to the shops to buy meat. He then went to the Lenz train station to board a train. After gaining entry at Lenz station through access control, he proceeded to the platform where he noticed that there were many people who were waiting for the train. Eventually the train arrived around 19:30 pm.

[7] He testified that when the train stopped at the platform, he secured a seat which is the second seat from the door. The train left the station with the doors open and that the doors remained open for the entire journey between the Lenz train station up to the scene of incident. As the train was travelling towards Lawley train station there were people at the doorway who were smoking dagga. He complained to the person who was smoking inside the train as the smoke made him feel dizzy. At that stage he was physically assaulted with what he believed could have been a fist or open hand.

[8] Plaintiff gave evidence that the train stopped at Lawley train station where a group of commuters boarded the train. They greeted and smoke with those boys who previously assaulted him.

[9] He testified that the group of boys who recently assaulted him advise those who boarded at Lawley station that there is a commuter in the couch who think he is smart and who talk too much.

[10] When the train was travelling towards Ennerdale train station, he complained again to another person about the smoke of dagga who then fought with him. He was then forced to smoke, but he refused and took the dagga and threw it away. He was also assaulted with a beer bottle on the head and with a panga at the back of his head, thereafter he was pushed out of the moving train and collided with a steel pole.

[11] He further testified that he lost consciousness and regained same after a while when he was lying on top of the platform and was helped by whom he believed to be paramedics or police. He regained consciousness after 3 (three) weeks in hospital. He conceded that he did not report the incident to Passenger Rail Agency of South Africa ("PRASA") officials or to the South African Police Service ("SAPS").

[12] In cross examination the plaintiff was confronted with the following issues:

12.1. Contradictions relating to the date of incident and the date of purchase of the train ticket;

12.2. Difference in evidence contained in his first affidavit deposed to on the 19<sup>th</sup> of June 2019 and a second affidavit dated 10 March 2021;

12.3. The reason why the plaintiff did not disembark from the train after his first assault, or change couches either by getting off the train or by passing to another couch;

12.4. The reason why the plaintiff complained for the second time about the smoke of dagga despite being hit with an open hand or fist on the head;

12.5. It was put to the plaintiff that the doors of the train were closed throughout the journey, and that the plaintiff never got injured on the train as alleged;

12.6. The reason why the plaintiff did not report the incident at PRASA officials and or with the members of SAPS.

[13] The defendant called Mr Bezuidenhout, a security area commander employed by PRASA, deployed at the investigation department to testify in relating to his investigation into this matter.

[14] Mr Bezuidenhout testified that when he was appointed to investigate this matter, he was only handed the summons which could not disclose the exact time of incident and the train number.

[15] He testified that the Metro guard is the person stationed at the rear of the train and that the guard must make sure that everything is clear before he closes the doors of the train. He will then ring a bell and press a button to indicate to the driver that the train can proceed. When a commuter tries to embark while the train is in motion, the guard will ring the bell three times for the driver to stop the train.

[16] He further testified that he could not find any information regarding this incident in their record books.

[17] During cross-examination the witness conceded the following:

17.1. He conceded that it is possible that people could block the doors of the train preventing it to close while the train is in motion;

17.2. He conceded that when the train is travelling between the two train stations the train guard do not observe through the window as it is dangerous to do so;

17.3. He conceded that it is possible for someone to be thrown out of the train while the train guard is not observing;

17.4. He conceded that during his investigation, he never interviewed the ambulance crew because he never received the ambulance report from PRASA panel of attorneys which was furnished to PRASA in June 2019.

17.5. He never visited the Baragwanath Hospital to gather information, in reply thereto he testified that the summons had no consent form and same was not furnished to him by PRASA panel of attorneys.

17.6. He never interviewed security guards who were deployed at Ennerdale train station. He is also not aware if there were security guards posted at Ennerdale train station on 17<sup>th</sup> November 2018.

## **DEFENDANT'S PLEADED CASE**

[18] The defendant has pleaded *inter alia* the following:<sup>1</sup>

“AD PARAGRAPH 7 THEREOF’

“4.3. The incident arose because of the sole negligence, alternatively reckless, conduct of the Plaintiff who attempted to disembark on a train that was in motion.

4.4. When attempting to disembark on the train that was in motion, the Plaintiff voluntarily assumed the risk of injury or death...”

## **EVALUATION OF THE EVIDENCE**

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<sup>1</sup> Vide: Case lines 005 – 17.

[19] There was no evidence to contradict the evidence given by the plaintiff. It is settled that uncontradicted evidence is not necessarily acceptable or sufficient to discharge an onus.<sup>2</sup>

[20] It does not follow, because evidence is uncontradicted, that therefore it is true. The story told by the person on whom the onus rests may be so improbable as to not discharge it.

[21] In cross-examination the plaintiff gave a reasonable explanation why he did not report the incident. He testified that after the incident he lost consciousness and regained same after three weeks.

[22] He gave a proper explanation why he could not switch couches or disembark from the train after the first assault. He testified that it is dangerous to switch couches and he could not disembark at Lawley train station as his destination was Orange Farm, he is also not familiar with Lawley train station.

[23] The plaintiff was questioned about the differences in his affidavits. He gave an explanation that he is not aware there was missing information because he gave all the information to his attorneys, and he believed that they acted in his best interests.

[24] There are a few contradictions in the evidence of the complainant, however they are not material of nature, taking into consideration that the plaintiff was unconscious for three weeks which could have affected his memory on detail.

[25] Although the plaintiff was confused about the date of incident and the date when he bought the train ticket, the evidence is clear that the incident occurred on the 17<sup>th</sup> of November 2018 and the train ticket was purchased on the 1<sup>st</sup> of November 2018.

[26] The pleaded version of the defendant that the plaintiff voluntarily disembarked the train that was in motion, was never put to the plaintiff in cross-examination.

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<sup>2</sup> Vide: McDonald v Young 2012 (3) SA 1 (SCA).

[27] It was stated by counsel for defendant that the defendant will lead evidence that during the incident, the doors of the train were closed. No such evidence was placed on record.

[28] In my view the plaintiff made a favourable impression on the Court as an intelligent witness whose account was truthful and reliable. Under cross-examination, he was able to logically substantiate his evidence thereby reinforcing it. He impressed me as a good witness and there is nothing to cast doubt on his veracity concerning the actual incident and subsequent events. There are also no inherent improbabilities in the version of the plaintiff to reject his evidence.

[29] The evidence of Mr Bezuidenhout for the defendant is insignificant. His version is that no such incident occurred on the 17<sup>th</sup> of November 2018, contrary to what was pleaded that the plaintiff voluntarily disembarked from the train while it was in motion. The defendant further stated the doors of the train were closed throughout the journey. Mr Bezuidenhout conceded that it is possible for commuters to block the doors from closing while the train is in motion.

[30] His investigation was incomplete as he failed to follow a checklist that he ought to have followed when the claim is not reported.

[31] The evidence tendered on behalf of the plaintiff was not contested that he was transported from the train station by ambulance to Baragwanath Hospital and that he was unconscious for three weeks.

[32] The plaintiff's version is also corroborated by the objective evidence of the train ticket that was purchased on the 1<sup>st</sup> of November 2018.

[33] The onus of proof in this matter was on the plaintiff and in my view, he succeeded in discharging the onus on a balance of probabilities. The defendant had a duty to lead evidence in rebuttal but failed to do so.

[34] It was submitted by counsel for the defendant that the plaintiff's evidence is too far-fetched and is in fact manufactured in order for him to have a claim against PRASA.

[35] It was further argued that the evidence placed before this court by the plaintiff is of such a poor calibre that the court cannot possibly find for the plaintiff.

[36] I disagree with the submissions made by counsel for the defendant for the reasons set out above.

## THE LAW

[37] It is trite that there exists a legal duty on the defendant to ensure that rail commuters who make use of its railway public transport system are safe: Measures that ought to be taken in order to comply with the public law of ensuring the safety and security of passengers include the following:<sup>3</sup>

37.1. Ensuring that their passenger trains are not overcrowded when transporting passengers;

37.2. Ensuring that all train doors are closed when the train is in motion;

37.3. Ensuring that there are adequate security personnel both on the train and on station platforms.

[38] The test for determining whether in a particular instance the defendant was negligent and therefore liable was stated as follows in *Mashongwa v Passenger Rail Agency of South Africa*:<sup>4</sup>

“Would a reasonable person in PRASA's position have: reasonably foreseen harm befalling Mr Mashongwa as a result of the absence of security guards or open doors? If so, would she have taken reasonable steps to prevent harm to

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<sup>3</sup> Vide: *Rail Commuters Action Group and Others v Transnet t/a Metrorail and Others* 2005 (2) SA 359 (CC).

<sup>4</sup> Vide: 2016 (3) SA 528 (CC).



Mr Mashongwa? If she would, did PRASA take reasonable steps to avert the foreseeable harm that ultimately occurred?”

[39] The issues of vicarious liability and the existence of legal duty on the part of the defendant towards its passengers were admitted by the defendant in its plea.

[40] The defendant in this matter allowed the passenger train in which the plaintiff was a passenger to be in motion with open doors.

[41] No measures were put in place to ensure the safety of the passengers in that particular train. No evidence was tendered by the defendant that any security guards were placed on duty on that particular train or on the train station at Ennerdale.

[42] I am of the view that a reasonable person in PRASA’s position would have reasonably foreseen harm befalling Mr Thabang and that PRASA did not take reasonable steps to avert the foreseeable harm that ultimately occurred.

## **CONCLUSION**

[43] For all these reasons I conclude that the defendant acted negligently and breached its public law duty to ensure the safety and security of its commuters.

[44] I thus grant the following order:

1. The defendant is liable for 100% of his proven or agreed damages sustained in the incident or near Ennerdale train station, on the 17<sup>th</sup> of November 2018; and
2. The defendant is to pay the plaintiff’s cost of suit in respect of the separated issue within 60 days.

**J.J. STRIJDOM**

*Acting Judge of the High Court  
Gauteng Local Division, Johannesburg*

**Heard:** 12-13 April 2022

**Judgment:** 16 May 2022

Appearances:

**For Plaintiff:** S. Mgiba

**Instructed by:** Mngqibisa Attorneys

**For Defendant:** R. Saint

**Instructed by:** Kekana, Hlatshwayo, Radebe Inc.