



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

CASE NO: 2013/32030

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED.
<u>10/02/2022</u>	
DATE	<u>Mahidi</u>
	SIGNATURE

In the matter between:

MOTLOUNG, JABULANI

Plaintiff

and

**PASSENGER RAIL AGENCY OF SOUTH
AFRICA (PRASA)**

Defendant

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 10 February 2022.

Summary: PRASA, a public transport utility and organ of state - liability for damages suffered by passenger; causation - causal link.

Held: public law duty well-established. Causation is the gist of the enquiry.

Held: open doors, malfunctioning doors or not properly closed doors facilitate passengers being thrown out or ejected by criminals and therefore constituting a causal link between negligent conduct or omission and the injuries suffered by a passenger.

JUDGMENT

MALINDI J:

Introduction

[1] The plaintiff, Mr Jabulane Motloun, claims damages against the defendant, Passenger Rail Agency of South Africa ("PRASA"), the successor to the South African Rail Commuter Corporation Limited, arising from the personal injuries he suffered as a result of the defendant's negligence in that it breached its legal duty of care towards him as a passenger by its failure "to ensure that the doors of the train worked properly, alternatively, closed during the stages that the train moved, alternatively, remained closed until the train came to a complete standstill."

[2] Other pleaded forms of negligence are irrelevant for the purpose of this judgment and were not pursued in evidence.

[3] The defendant denies liability on the basis that all the train doors had been checked and found to be in working order in accordance with the standard operation instructions, alternatively, that the doors were closed at the time of the incident even if not as required.

Background Facts

[4] The factual matrix in this matter is largely common cause or is uncontroverted. It is as follows as testified by the plaintiff:

- 4.1 During September 2010, the plaintiff resided in Sebokeng near Vereeniging, and was employed as an assistant boilermaker at Concor Engineering in Amalgam, Mayfair, in Johannesburg. He had started employment there in August 2006.
- 4.2 The plaintiff used to travel to work by train on the Vereeniging – Johannesburg line. He boarded the train at Eatonside station using monthly tickets.
- 4.3 On the day of the incident, the plaintiff woke up at about 05:00 and arrived at Eatonside station at about 05:45.
- 4.4 He entered the station and had to show his monthly ticket to the ticket controllers. He kept his ticket in a ticket holder in his wallet.
- 4.5 The plaintiff waited at the platform for about 5 minutes. There were about 10 to 15 people on the platform. When the train arrived, he boarded a coach which had three sets of sliding doors on the platform side. As the train arrived, he had noticed that two doors of this coach were open.
- 4.6 After the plaintiff sat down and as the train departed, he noticed that the doors did not close. The doors did not make the usual swooshing sound indicating that there was pressure. The plaintiff stood up and closed the

doors. It was easy to close the doors by hand. He explained that one could use a finger to open or close these particular doors when the vacuum pressure has not been applied.

- 4.7 When the doors of a coach are functioning properly, it is difficult to open them. But two persons using force will be able to do so. The plaintiff testified that this is when two persons are keeping the doors open after obstructing them before they close completely.
- 4.8 There were about 6 to 8 other people in the coach.
- 4.9 The next stop after Eatonside was Residencia station. No one got into the plaintiff's coach and the doors remained as he had closed them.
- 4.10 The train departed for Stretford station. Not long thereafter, two men entered the coach from the rear, that is, through the interleading doors of the coaches. One had a knife and they started robbing a lady who was seated close to that door.
- 4.11 The plaintiff tried to intervene, but the other man then produced a firearm and the plaintiff surrendered. Despite this, he was assaulted by the two men. They hit and kicked him until he lost consciousness.
- 4.12 The plaintiff's next recollection was when he woke up in Baragwanath Hospital. The plaintiff had injuries on his head (chin, face, back of head), on his left hand, and his right knee that was seriously injured. After he was discharged, he found small pieces of stone embedded in the skin on his head, and a piece of glass in his left hand.

- 4.13 At the time of his discharge from hospital, the plaintiff was no longer in possession of his wallet, and his shoes had also been stolen.

Defendant's Evidence

[5] The defendant led evidence of two witnesses, Mr Karabo Ramakhula, the defendant's Metro Guard and train driver assistant, and Ms Phumelele Mbata, the defendant's Protection Officer. Their evidence sought to demonstrate that the probabilities are that the train doors were properly closed on this journey as they had been certified as functioning after the standard operating procedures were conducted in the morning, and that it could not be confirmed that the plaintiff was a passenger on the train on the day, respectively.

[6] Mr Ramakhula's evidence, supported by his daily journal of 2 September 2010, that he was satisfied that the doors of the train were closed while it travelled between Residensia and Stretford, is not borne out by the fact that the plaintiff was found on the railway line with serious injuries. This is confirmed by the evidence of Ms Mbata who was called to the scene and wrote a report confirming this. The plaintiff's evidence that his train ticket was stolen off him together with his wallet is uncontroverted. I accept his evidence that on the day of the incident, he had been on his daily trip to work as a paying passenger on the train.

[7] The plaintiff's evidence is therefore credible and is the version by which this matter must be determined.

The Law

[8] The law regarding the defendant's legal duty to its passengers is well-established. The elements of wrongfulness, negligence and both factual and legal causation were settled in *Mashongwa v Passenger Rail Agency of South Africa*,¹ and *Rail Commuters Action Group and Others v Transnet Ltd t/a Metrorail and Others*.² I will not restate the principles herein.

[9] In argument, the issue for determination became only whether the plaintiff had proved factual causation, that is whether the defendant's conduct or omission was the direct cause for the injuries suffered by the plaintiff. In this regard, counsel for the defendant, Mr Tisani, submitted that as the plaintiff had testified that he had closed the train doors after it had driven away from Eatonside, and that they were not opened at the next station, Residensia, this case does not fall in the category of "open" doors.

[10] The Constitutional Court said the following in *Mashongwa* para 63:

"[63] That PRASA's conduct was wrongful and negligent, does not quite resolve the question whether liability should be imputed to it. Its concern in the Supreme Court of Appeal was that the element of causation was not established. The question is whether there was a causal link between PRASA's negligent conduct or omission and Mr Mashongwa's injuries. It must also be determined whether there is a close enough connection between PRASA's negligence and Mr Mashongwa's injuries. Before these questions are answered, it must first be determined whether the Lee test or a different approach to causation applies."

[11] In cases referred to by both parties, the defendant was held liable where the coach doors were left open.³ The defendant has submitted that this case is distinguishable from these because the doors were closed. This is an attractive argument because in *Mashongwa* it was said that the objective of closed doors was to secure the passengers from falling out and taking ill-advised actions because of the open doors. Mr Tisani

¹ 2016 (3) SA 528 (CC).

² 2005 (2) SA 359 (CC).

³ *Mazibuko v PRASA* (Gauteng High Court, case number 2011/40493), *Mothobi v PRASA* (Gauteng High Court, case number 2010/26087), *Transnet Ltd t/a Metrorail & Another v Witter* 2008 (6) SA 549 (SCA).

strongly argued that but for the unforeseen conduct of the criminals, the plaintiff would not have fallen out of the train.⁴

[12] What constitutes “open” doors requires examination in view of what the defendant has instituted as standard operations instructions. In *Mazibuko*, Weiner J said that “*no train should be in motion unless all the doors are properly closed*”.⁵ I align myself with the view that “open” doors includes instances where the vacuum pressure system is malfunctioning thereby allowing easy opening of the doors.

[13] The Constitutional Court in *Mashongwa* said that the defendant’s general operating instructions “prohibiting trains travelling with open doors” serve the purpose of ensuring that they do not facilitate passengers being thrown out or suffering injuries as a result of the doors being open.⁶ It is therefore clear that it is the state of an open door that incentives criminals to throw their victims out or passengers to take actions that lead to their injury. The Court also found that “it must have been known to PRASA that criminals at times throw their victims out of its moving trains”.⁷ Contrary to the defendant’s vehement argument referred to above, as was said in *Mashongwa*, it is foreseeable that criminals will be virtually irresistibly tempted to throw their victims out.

[14] The defendant led the evidence of Mr Ramakhula, who testified about the process of ensuring that the doors of train number 9013 close in order to ensure that the door closing mechanism is functional throughout the journey. Of importance is that the mechanism uses vacuum pressure to ensure that when the doors are closed, they are not easy to open until the opening mechanism has been applied and the pressure is

⁴ *Mashongwa* para 53.

⁵ Para 33.

⁶ Para 48 and 49.

⁷ Para 49.

released to allow easy opening by passengers by hand. He stated that once the doors have closed completely, it is very difficult for anyone or more people to prise them open.

[15] This evidence, and that provided in *Rail Commuters*⁸ indicates an obligation to eliminate train motion with open doors or doors that can easily be opened because of the malfunctioning of the vacuum pressure mechanism. Both these circumstances facilitate passengers being thrown out or engaging in conduct that is dangerous to themselves such as standing in the doorway, leaning against doors or alighting before or boarding before the train has come to a complete stop.

[16] I have come to the conclusion that the doors that could not close firmly or properly as a result of the malfunctioning pressure mechanism, were a causal link between the defendant's negligent conduct or omission and the plaintiff's injuries. There is a close enough connection between the defendant's negligence and the plaintiff's injuries. Had the doors of the coach in which the plaintiff was travelling been properly closed, it is more probable than not that he would not have been thrown out or ejected out of the train.⁹ Had the criminals been unable to throw him out, he would not have suffered the extra injuries as a result and in addition to those suffered as a result of being assaulted by them. Factual causation has been established.

Conclusion

[17] I have come to the conclusion that the plaintiff has discharged the onus that he bears and therefore the defendant is liable for the damages suffered by the plaintiff as a result of being thrown out of the moving train.

⁸ *Rail Commuters Action Group & Others v Transnet Ltd t/a Metrorail & Others* above.

⁹ *Mashongwa* para 66.

[18] The following order is made:

1. The defendant is liable for 100% of the damages that the plaintiff may prove.
2. The defendant is to pay the costs.



G MALINDI
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION
JOHANNESBURG

FOR THE PLAINTIFF:

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DATE OF THE HEARING:

31 January 2022

DATE OF JUDGMENT:

10 February 2022