



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ☒ YES/NO
(2) OF INTEREST TO OTHERS JUDGES: ☒ YES/NO
(3) REVISED

24/2/16
DATE

[Signature]
SIGNATURE

CASE NO: 47217/2014

12/2/2016

In the matter between:

SILAS MOLALLA RAKGOTHO

Plaintiff

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Defendant

JUDGMENT

Baqwa J

- [1] This is a claim for damages arising from injuries suffered by the plaintiff when he allegedly fell from a moving train.

- [2] At the beginning of the trial the parties agreed and an order was made separating the issues to be tried in terms of Rule 33 (4) of the Uniform Rules of Court and the case has proceeded on merits only.
- [3] The plaintiff alleges and the defendant admits the ownership of Kaalfontein Station where the incident took place and the trains moving in and out of that station.
- [4] The facts are briefly that on 8 April 2014 the plaintiff was on his way to work at about 05h45 in the morning. He proceeded from his home at Esselen Park to Kaalfontein Station in order to catch a train.
- [5] At the station he awaited the arrival of the train in platform 1 and when it came he boarded together with other commuters. When he boarded the train was already full of other commuters and there was standing room only.
- [6] He testified that all he could manage was to find a place to stand near the door of the carriage he boarded. He stood facing the rear of the train which had arrived from a northerly direction travelling towards the south. There were passengers standing towards his right hand side whilst on his left side was the open doorway of the train.
- [7] The train started moving but the doors did not close. They remained open. He had nowhere to hold on to as the support handles attached to the roof of the train had all been utilised by other passengers.

- [8] No sooner had the train started moving away from the platform than he was bumped by the passengers who were nearest to him out of the train. He landed on the ground outside the train on his left hand side and he suffered injuries to his head and on his hand. He lost consciousness.
- [9] The plaintiff alleges that this was caused by the negligence of the defendant's employees who were negligent in that they signalled to the driver of the train that it was safe for the latter to set the train in motion whilst the carriage doors were open or that they failed to ensure that all the carriage doors were closed before setting the train in motion.
- [10] The defendant denied the allegations by the plaintiff and more particularly denies that the plaintiff was a passenger in one of its trains on the day in question.

Evaluation

- [11] The versions of the two parties are mutually destructive. The plaintiff alleges that he boarded the train in platform 1 en route to Germiston to his place of work. As a result when he was bumped off the train through an open door he landed on the rail line on the southern side of platform 1. This is what is disputed by the defendant.
- [12] The defendant alleges that the plaintiff was found on the northern side of platforms 2 and 3 on the route utilised by trains proceeding towards Pretoria. The defendant avers that it is therefore a physical impossibility for the plaintiff to have been found on that spot if he was indeed travelling on the Germiston bound train.

- [13] These versions are presented for the plaintiff by the plaintiff himself and for the defendant by two witnesses, namely a train guard, Hazel Saula and a security guard Emmanuel Khumalo.
- [14] Both sets of witnesses were subjected to thorough and lengthy cross examination. Their versions remained the same as summarised above and I do not propose to regurgitate their evidence in detail.
- [15] I need only mention that the main bone of contention, namely, where the plaintiff was found in an injured state was contested with reference to the sketch plan exhibit B 19 and a photograph exhibit C. Each party averred that the photograph exhibit C represented a depiction of its version of events.
- [16] When the defendant closed its case it became clear that the conflict between the two versions could only be resolved by means of an inspection in loco.
- [17] I directed that the inspection be held especially bearing in mind that the witness Khumalo had testified that the plaintiff was found between rail way lines adjacent to platform 2 and 3 between mast poles EA 23/533 and EA 23/466. These mast poles were the main physical points of reference with regard to where the plaintiff was found. According to Khumalo he had recorded these points contemporaneously with finding the plaintiff.
- [18] The inspection in loco was held on Thursday 11 February 2016 by the Court and the parties herein. The Court has already put its notes on record regarding the inspection in loco and I do not propose to repeat the observations made by the Court and the parties as these have been accepted by both parties as correct.

[19] Cutting to the chase, and bearing in mind the mutually destructive versions of the parties, only one version can be true and the other one must be false.

[20] Until the inspection was undertaken, the picture was quite confusing and either version could have been true. The inspection in loco has been most helpful in clarifying matters. It is now common cause that if the plaintiff boarded a train on platform 1 and was travelling in the Germiston/Johannesburg direction, he would have fallen on the southern side of platforms 1 and 2. It is now also common cause that mast poles EA 23/533 and EA 23/466 between which the witness Khumalo found the plaintiff lie to the north of platforms 2, 3 and 4. Bearing this in mind and on the plaintiff's own version, it would be a physical impossibility for him to have been bumped off a train moving south but be found lying in a position north of platforms 2 and 3.

[21] Counsel for the plaintiff has sought to hold on to Khumalo's testimony with regard to exhibit C which is a picture taken of platforms 1 and 2 facing south in the Johannesburg direction. This picture was not authenticated in that the photographer was not called to testify and the purpose for which it was taken was not clarified. Moreover the immovable position of the mast points referred to above demonstrates that Khumalo's evidence that exhibit C depicted a northerly direction of Kaalfontein Station was erroneous which he himself conceded under cross-examination.

[22] Despite Mr Sibuyi's submissions in this regard I cannot, using exhibit C simply transpose Khumalo's evidence and pretend he testified to the contents thereof as the photograph facing the southerly direction of Kaalfontein Station. This would be an undue alteration or corruption of the evidence given before this court.

[23] I accept Mr Mulligan's submission that when two versions are mutually destructive a court's options are to believe one or the other or if not weigh the probabilities and decide the matter in accordance with the balance thereof.

[24] In *casu*, weighing the probabilities would have been like a plunge into darkness which would be littered with a litany of uncertainties but the inspection lifted a possible veil of darkness in that it elevated the quality of evidence in such a manner that the probabilities were narrowed almost to a level of certainty where the court could reach a conclusion without hesitation.

[25] I also accept that while the plaintiff's version was not inherently improbable, if the court accepts the defendant's version, then the plaintiff's version can only be described as dishonest.

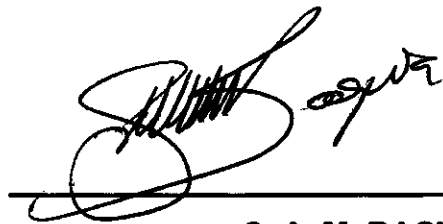
[26] I find that Khumalo's version is corroborated by objective evidence of the mast pole which was recorded in his pocket book contemporaneously with the discovery of the injured plaintiff. This evidence was not challenged by the plaintiff; Khumalo also recorded the plaintiff's ticket number which was correct. He also recorded the plaintiff's name which was correct. There can therefore be no doubt that the mast pole numbers which he recorded were correct. That objective evidence has now been verified during the attendance and observations in the inspection in loco.

[27] The plaintiff's counsel has argued that the difference in the evidence of the train guard Ms Saula and the security guard Mr Khumalo with regard to the point where the plaintiff was found is suggestive of mendacity on their part. Again taking the inspection observations and Saula's evidence into account, the distance between the two points is a mere 11 meters. This can hardly said to be a contradiction or conflict in their evidence. Instead, I find it to be a remarkable point of corroboration given the fast pace of events on the day in question.

[28] In the circumstances I find that the evidence of the two witnesses constitutes the more probable version. I find that the evidence with regard to the mast poles took the matter beyond conjecture.

[29] In the result the following order is made:

The plaintiff's claim is dismissed with costs.



S. A. M. BAQWA
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Heard on: 9 - 11 February 2016

Delivered on: 12 February 2016

For the Plaintiff: Advocate M. Sibuyi
Instructed by: R. S. Mahuntsi Attorneys

For the Defendant: Advocate S. Mulligan
Instructed by: Norton Rose Fulbright South Africa Inc.