



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

CASE NO:37086/2013

DELETE WHICHEVER IS NOT APPLICABLE

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

27/5/2016

DATE

Ranchod J
SIGNATURE

In the matter between:

ANNAH NDAKANA

PLAINTIFF

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA DEFENDANT

JUDGMENT

RANCHOD J

[1] The plaintiff instituted action against the defendant for damages as a result of bodily injuries she sustained when she fell from a train at Saulsville railway station on 27 March 2012.

[2] The parties agreed that the trial should proceed only in respect of the merits. The determination of the quantum for damages was accordingly postponed sine die.

[3] In the particulars of claim plaintiff pleads that she was injured "when a train, belonging to the Defendant and/or over which the Defendant exercised control, suddenly and without warning pulled off while the Plaintiff was in the process of exiting from the train, and in so doing causing the Plaintiff to lose her balance and fall to the ground (the "incident")."

[4] It is alleged that the driver of the train was negligent in one or more of the following respects:

- 4.1 He caused the train to suddenly pull off without ensuring that it was safe to do so;
- 4.2 He failed to exercise proper or adequate control over the train;
- 4.3 He failed to keep a proper lookout;
- 4.4 He failed to prevent the incident when he was, with the exercise of reasonable care in a position to do so.

[5] It was further pleaded that as a result of the incident the plaintiff suffered a severe fracture of her pelvis and left arm, as well as severe bruising and soft tissue injuries over her entire body.

[6] At the commencement of the trial Mr Tisane, who appeared for the defendant informed the court that the defendant has abandoned reliance on negligence on the part of the plaintiff as set out in sub-paragraphs 4.2.5; 4.2.8; 4.2.11 and 4.2.13 of its (the defendant's) plea. Defendant persists with the remaining grounds of negligence on plaintiff's part as set out in the remaining sub-paragraphs of paragraph 4.

[7] Three witnesses testified for the plaintiff including the plaintiff herself while two witnesses testified for the defendant, i.e. the train driver and the train guard.

[8] In my view it is not necessary to set out all the evidence in detail. By the end of the trial and in written heads of argument as well as oral argument, plaintiff's counsel submitted that the crux of the case was whether, after the train had stopped at Saulsville station the train driver caused it to move

forward again without prior warning and while the doors were open, causing plaintiff to fall down.

[9] The plaintiff testified that on 27 March 2012 she adjourned from school early and decided to take the train back to her home in Saulsville instead of the bus, which would only have arrived later. She is not a regular train commuter. This was only the second time that she travelled in a train. At Pretoria Station the intended train was delayed, hence the plaintiff was only able to take a later train from Pretoria to Saulsville. The train was full as it had to accommodate more passengers as a result of the first train's delay. It is common cause that the plaintiff was in possession of a valid train ticket at the time. The trip from Pretoria Station to Saulsville Station lasted just more than half an hour. The plaintiff testified that she travelled in the third last coach of the train (i.e. the second last passenger coach as the last one is a motor coach). According to the plaintiff she was seated in the opposite row of benches from the sliding door which would lead onto the platform at Saulsville Station. When the train stopped at Saulsville Station, the passengers got up and the sliding doors opened and passengers disembarked from the train. Two to three minutes after the train had stopped, the plaintiff began disembarking but the train started to move forward again. At this particular moment the plaintiff grabbed hold of the pole/railing next to the door in the train coach in an attempt to maintain her balance. At that moment her body was already outside of the train, enabling her to notice a person waving a red flag at the back of the train, who appeared to stand on the railway track. The plaintiff heard an extremely loud noise (which she described as a siren) coming from the train and then lost grip of the pole/railing. The plaintiff fell from the train and hit the platform with the left side of her body while becoming stuck in the narrow opening between the platform and the train coach. The train was still moving forward at this stage. When the train had moved far enough forward for the plaintiff to reach the gap between two coaches, the plaintiff fell down from the platform underneath the train. Thereafter the train stopped again. The time which elapsed from the moment the plaintiff lost grip of the pole/railing in the train coach until she fell on the train tracks underneath the train, was estimated to be a few seconds.

[10] Mr Sibusu Masilwana testified that he was travelling in the same train coach as the plaintiff on the day in question. He did not sit close to her, but more to the back of the coach. He said that after the train had stopped at Saulsville station, the doors opened and commuters started to disembark. As the plaintiff stepped out of the coach, the train started to move forward again. In the process of moving forward, the train doors closed again and trapped the plaintiff's leg. He testified that the doors of the coach closed when the train was in the process of pulling away. Mr Masilwana conceded that he could not see the entire body of the plaintiff when she stepped out of the train, but only her upper body. There were passengers between him and the plaintiff that obstructed his view. He could not say which leg she used to step out or which leg was trapped by the door. He furthermore conceded that he did not see how and when the plaintiff fell, but that he was only later told by other passengers that someone had fallen underneath the train.

[11] Mr Mpho Lehabe – the third witness for the plaintiff testified that he also travelled from Pretoria to Saulsville on the particular day in the same train, but was seated in a different coach, i.e. the passenger coach in front of the coach in which the plaintiff was travelling. He testified that the train stopped at Saulsville Station, whereafter numerous commuters exited the train, including himself. Mr Lehabe estimated that it took him less than a minute to exit the train. Moments after he had stepped out of the train onto the platform, he heard people screaming behind him. He turned around to look and saw that the train was moving again, while the doors were open. He noticed the plaintiff outside the train on the platform being dragged by the train, whereafter the plaintiff eventually fell down from the platform in-between two coaches. Mr Lehabe was frightened by the prospect of seeing the plaintiff whom he knew well having been mutilated by the train. He therefore did not go to where the plaintiff had fallen from the platform, but left the platform and went outside of the station. He was called back by some of the spectators. When he returned to the scene, he found that the train had been moved away from the plaintiff. He testified that other persons attended to the plaintiff before he reached her. He was then asked to go down onto the train track to

comfort the plaintiff, which he did. He confirmed that the paramedics removed the plaintiff and took her to hospital.

[12] The train guard, Mr Sydney Masumbuko testified that he is a trained guard having 8 years' experience as such. He said on arrival at Saulsville Station the train was brought to a complete stop by the train driver. Masumbuko opened the doors to allow passengers to disembark. Immediately thereafter an employee of the defendant approached and informed him that a passenger had fallen from the train. He, Masumbuko, immediately went to where the passenger was lying on the ground between the lower end of the platform and the train tracks. The plaintiff was taken to hospital by paramedics after the train was moved further forward into the station to allow access to the plaintiff.

[13] Mr Prinsloo testified that he had 43 years' experience as a train driver at the time of the incident. He was retired when he testified. He said on arrival at Saulsville Station he brought the train to a complete stop at the 12 coach mark. The train guard opened the doors to allow the passengers to disembark. Prinsloo got off the train for purposes of the 'turn around' procedure which involves him exchanging places with the guard so that he could drive the train back to Pretoria. As he walked towards the back of the train he noticed a throng of commuters and the defendant's personnel, including the train guard towards the rear end. On arrival at the scene he noticed the plaintiff lying on the ground between the lower end of the platform and the train tracks.

[14] He denied having moved the train forward after it had initially stopped. He further testified that he only moved the train deeper into Saulsville station so as to expose the fallen passenger's position after obtaining permission from Central Train Control (CTC) to do so. Paramedics took the plaintiff away from the scene.

[15] It is clear that there are mutually destructive versions as to whether the train had moved forward again, whilst the plaintiff was disembarking, after

having come to a stop. In this matter the onus is on the plaintiff to prove negligence on a balance of probabilities on the part of the defendant's employee or employees, in this instance the train driver or the guard or both of them. See Pillay v Krishna 1946 AD 946 at 951-952.

[16] It was held in SFW Group Ltd & Another v Martell et cie & Others 2003(1) SA 11 at 14 para [5]:

“On the central issue, as to what the parties actually decided, there are two irreconcilable versions. So, too, on a number of peripheral areas of dispute which may have a bearing on the probabilities. The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities.”

[17] The plaintiff said she boarded the train at Pretoria at about 14h30 and it took just over 30 minutes to get to Saulsville station which means it arrived there at about 15h00. It is not in dispute that the incident occurred at about 14h22. Yet she said under cross-examination that she was very sure that she boarded the train at 14h30. Plaintiff testified in evidence-in-chief that she was sitting on a seat near the exit door yet it took her two to three minutes to get off the train. She said when the train stopped some people got off and she proceeded to get off as well. It seems improbable that it would take 2 to 3 minutes to do so in the absence of a reasonable explanation for the delay. Her explanation was that it took so long to get off because there were other passengers who were getting off as well but her evidence was that she was sitting close to the exit door.

[18] Plaintiff said she saw a person with a red flag standing on the railway track and it seemed he was trying to stop the train. This seems improbable in that the person (presumably the train guard who had in his possession a red flag) would be standing on the tracks to stop a train moving forward where the driver is in the front coach of the train and he is at the rear.

[19] Plaintiff said when the train began moving forward again she let go of the pole she was holding onto while getting off and she fell down which begs the question why she did not keep holding on for then she probably would not have fallen down – if her version is to be accepted.

[20] The crisp issue is whether after having come to a stop, the train moved forward whilst plaintiff was getting off. Plaintiff was adamant that that is what happened. Her demeanour in the witness box cannot be criticised. She was calm and gave her evidence in a fairly forthright manner.

[21] However, plaintiff's witness Mr Masiloana was not an impressive witness at all. He speculated about things he had no first-hand knowledge of.

[22] Mr Masiloana testified that when the train stopped all the passengers stood up. As the plaintiff stepped out the train moved forward again. He said in evidence-in-chief that he did not see plaintiff falling as he was still inside the train and she had already gone out of the train. He himself got off together with other passengers after the train had moved forward. He said the train doors closed as the plaintiff was disembarking. Under cross-examination he said he was seated far from the plaintiff in the same coach but that plaintiff was sitting on the seat near to the platform, which is contrary to what plaintiff said. When asked three times if there was anyone between the plaintiff and the door when she was disembarking he repeatedly gave evasive answers and then finally said there were. He said plaintiff was standing with one leg and her body outside when the doors closed and trapped her other leg which was still inside. He said there were 3 people between him and the plaintiff but he had a clear view of her but then said he did not see her whole body because of the people in between him and her. Asked how he could have seen if any part of her body was outside he said it's because when one gets off the body moves out but the leg goes outside first. Asked further if he was speculating or whether he in fact saw it happen he said he did see it happen. He then claimed he saw her being pulled by the train after she fell. After having earlier said he did not have a clear view of the plaintiff he then said he saw her falling and then again that he heard passengers saying a person had

fallen off the train. He estimated that the train had stopped for about a minute before it moved again unlike plaintiff's estimation of 2 to 3 minutes but then said he is not sure and agrees with plaintiff's estimation of the time. His testimony is rejected as being unreliable.

[23] Mr Lehabé was sitting in a different coach and did not see plaintiff falling off the train. When the train stopped he disembarked and, he said, the train moved forward within a few seconds. Under cross-examination he said he was on his way to the exit point of the station when within a few seconds he heard screaming. He turned around and saw the train moving, contrary to his evidence-in-chief that the train moved within a few seconds of him disembarking. He attributed this to the fact that it all happened a long time ago. Still later he said the incident happened after the passengers had disembarked. When it was put to him that the train driver will testify that the train did not move again he said he had no comment but when pressed on this point he said he did see the train moving. While it cannot be said that this witness was deliberately being untruthful, it does appear that his recollection of events is not reliable.

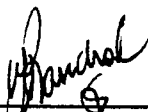
[24] Mr Masombuka the train guard explained his duties when a train arrives at a station. He gets off and stands on the platform checks if passengers have embarked or disembarked then blows whistle and if it's safe for the train to move he would close the train doors. He then signals to the driver via a bell communication that he can move the train. This duty applies only when the train is about to leave the station – not when it arrives. On arrival his duty is to open the doors once the train has come to a stop. On the day of the incident, once the train came to a halt he opened the doors and immediately thereafter a security guard came to report to him that a person had fallen underneath the train.

[25] Mr Masombuka made a good impression. There were no contradictions in his evidence. He was calm and gave considered answers under lengthy cross-examination.

[26] The train driver, Mr Prinsloo, tended to express himself in rather colourful language. He on several occasions gave somewhat confusing answers but this was clearly due to him not understanding the questions properly and it certainly was not because of dishonesty on his part. In fact, he made an overall good impression on the court and I find his evidence to be reliable. He said on the day in question he had stopped the train then got off to go to the back of the train as he was going to drive the train back to Pretoria. He said he did not move the train forward again after stopping except when the plaintiff had to be reached by the paramedics. And then too, he only moved it with the permission of the CTC.

[27] In my view, the plaintiff has failed to discharge the onus to prove negligence on the part of the defendant's employees.

[28] In all the circumstances, there shall be absolution from the instance with costs.



RANCHOD J
JUDGE OF THE HIGH COURT

Appearances:

Counsel on behalf of Plaintiff	: Adv N.F. De Jager
Instructed by	: Gert Nel Inc.
Counsel on behalf of Defendant	: Adv S.M. Tisani
Instructed by	: Diale Mogashoa Inc.
Date heard	: 13 May 2016
Date delivered	: 27 May 2016