



**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**DELETE WHICHEVER IS NOT APPLICABLE**

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED: **NO**

Date: **28 April 2022** Signature: \_\_\_\_\_

**CASE NO: 31544/2019**

In the matter between:

**FRANS HOARIHLE NTSOANE**

**Plaintiff**

And

**PASSENGER RAIL AGENCY OF SOUTH AFRICA**

**Defendant**

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## JUDGMENT

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**NYATHI J**

[1] This is an action for damages arising out of an incident in which the Plaintiff was pushed from a train and fell on the rail tracks near a station, sustaining bodily injuries in the process.

[2] On agreement between the parties, the issues were separated. This court only has to deal with the merits, with the quantum postponed *sine die*. It is so ordered.

[3] On or about the afternoon of the 28<sup>th</sup> day of March 2019 Plaintiff was a passenger in a train that was travelling from PRETORIA to THEMBISA. At or near Irene station in Centurion, while the train was in motion, the Plaintiff was allegedly pushed and he fell out of the moving train.

[4] The Defendant is the PASSENGER RAIL AGENCY OF SOUTH AFRICA (hereinafter referred to as “PRASA”) a juristic person established in terms of section 22(1) of the Legal Succession to the South African Transport Services Amendment Act 38 of 2008, with full legal capacity to institute action and defend action brought against it, having its principal place of business at 1040 BURNETT STREET, PRASA HOUSE, HATFIELD, PRETORIA within the area of jurisdiction of this court.

[5] The Plaintiff sets out his basis for alleging that PRASA's negligence caused his accident, subsequent injuries and consequent damages claimed in his particulars of claim as follows:

“5. The aforesaid accident was caused solely by the negligent operation of the train operator/operators, them/him having being negligent in one or more or all of the following respects: -

5.1. they/he failed to keep proper lookout;

5.2. they/he failed to take any or adequate steps to avoid the accident when by the exercise of reasonable care and diligence, he could and should have done so;

5.3, they/he failed to apply his brakes either timeously, adequately or at all;

5.4. they/he failed to operate a train safely by not making sure that the train doors are not open while the train is in motion.

5.5. they/he failed to provide proper security by failing to secure its/ their passengers while having a duty to do so.

6. As a result of the aforesaid accident, the Plaintiff sustained the following severe bodily injuries: -

6.1. Fracture right proximal fibula;

6.2 Swollen ankle;

6.3 Swollen knee;

6.3 Painful shoulder;

6.4 Painful hip;

7. As a result of the aforesaid injuries suffered by the Plaintiff:

7.1 The Plaintiff suffered pains.

8. As a result of the aforementioned injuries the Plaintiff received medical treatment which included:

8.1. Pain management;

8.2 Plaster of Paris;

9. ...”

[6] The Defendant denies all liability, more particularly that the cause of this incident was due to the negligence of Defendant’s operators.

[7] The Defendant specifically pleaded that the injuries sustained by the Plaintiff are not consistent with the manner in which the Plaintiff alleges the incident to have occurred.

[8] During the trial the Plaintiff testified he had been a passenger in a full train. He had boarded the train at Pretoria A station. He was a postman in Pretoria and had knocked off at 15h00.

[9] On arrival at the station he had produced his monthly train ticket at the gate and gained entrance. A copy of the ticket was handed in and marked as exhibit “1”. It bore the date 31 March 2019, which was its expiry date.

[10] On arrival at the platform, the Plaintiff got notification that the train he had been supposed to board had been cancelled. There were many commuters at the platform at the time. For the now disenchanted travellers, this occasioned a long wait for the next scheduled train to arrive.

[11] Eventually the train pulled up to the platform, at an estimated time of between 17h30 and 17h40. The passengers boarded the train amidst a lot of shoving and pulling due to their numbers. The train was full.

[12] There was not a single security officer in sight inside the train as it pulled away with all doors ajar. The Plaintiff had entered a carriage and was a standing passenger.

[13] At Irene station the train stopped and still more passengers embarked amidst the typical pushing and shoving. On departure from Irene the train doors remained open still. Not a single security officer was in sight as before.

[14] Shortly after it had left Irene station, the train lurched as it changed track lanes. At that point the Plaintiff got pushed asunder and fell out of the train through an open doorway onto the rail tracks.

[15] Quite some time passed until two security officers who had stood guard at the station approached him as he lay there. The train proceeded along its journey.

[16] The two security officers spoke to him as he attempted to get up and demanded his ticket. He handed the ticket to the officers, who asked him for his full names. He told them who he was and they wrote down the information on their notebooks.

[17] They asked him if they should call for an ambulance and he declined the offer. He had felt at the time that he could still walk although his foot felt numb.

[18] He walked back to the platform and boarded the next train where he found a seat and sat down as it was not full.

[19] He went home and slept. At night he started to feel excruciating pain and could not get up from his bed. He somehow slept on until the morning when he phoned his nephew to come and take him to hospital.

[20] His nephew obliged and came to assist him bath and carried him on his back to the car. He drove the Plaintiff to Tembisa hospital. It was there that his nephew ferried him on a hospital wheelchair to reception and helped him open a file at about 10h00.

[21] The Plaintiff then endured a daylong wait until 17h00 when he was attended to.

[22] Plaintiff was checked and sent for X-rays. The findings were that he had a fractured bone below the knee. He also had a sprain on the right shoulder and at the right ankle.

[23] The Plaintiff was thereafter sent to the orthopaedic department where his leg was cast in Plaster of Paris. He was then advised to go and recuperate at home.

[24] Plaintiff then phoned his nephew to come fetch and take him home.

[25] Mr. Muleya, counsel for the Plaintiff handed in the already discovered hospital records for the record. They are designated exhibit “2”.

[26] This concluded the Plaintiff’s case.

[27] Cross examination by Ms. More, counsel for the Defendant then followed. Plaintiff withstood the rigours of questioning and stuck to his testimony throughout. The Defence concluded its case without leading any evidence. Argument on the merits then followed.

[28] The Plaintiff’s case covers the events of the fateful afternoon from when he left his workplace in Pretoria through to the station. He lays out his journey by train, the accident, his arrival at home, the night and his hospital treatment.

[29] Plaintiff made no attempt to embellish the accident and extent of injury. It is clear that he received sub-standard treatment at the Tembisa Hospital. He had to spend the whole day waiting to be seen by medical staff. This is shameful poor treatment of a trauma patient in the public sector.

[30] Plaintiff stated under unrelenting cross-examination that he has a sharp recollection of his bodily injuries due to the fact that he still endures episodes of pain.

[31] It is safe to conclude on the facts here that this incident would not have occurred **but for**, Defendant's negligence. Defendant's negligence, which is proven, is causally connected to the Plaintiff's injuries.

[32] The facts speak for themselves:

- 32.1 Plaintiff's regular train was cancelled on that day, having an impact on the numbers of commuters;
- 32.2 There were no guards in the train to control crowds;
- 32.3 The train at issue went in transit with doors wide open;
- 32.4 the Defendant did not proffer any alternative evidence to attempt to counter the Plaintiff's version, which stand uncontroverted.

[33] In *Passenger Rail Agency of South Africa v Sithuse* (Case no 569/2020) [\[2021\] ZASCA 78](#) (11 June 2021) the Supreme Court of Appeal held that **PRASA** was negligent by failing to deploy security personnel at the station on the day in question to enforce the rules, which were put in place to safeguard the well-being of commuters. As regards causation, the court held that the incident could have been averted ‘but for the lack of supervision of the activities of the commuters and lack of enforcement of the rules that are in place’.

[34] In *Mashongwa v PRASA* [2015] ZACC 36 the Constitutional Court held that a transport utility ought to be held delictually liable for damages that flow from a breach of its public law duty to provide safety and security measures for its rail commuters. In *Mashongwa* no security guards were deployed on a train or coach in which a passenger was attacked and severely injured by criminals.

[35] That a public transport operator has a contractual obligation to deliver a safe and efficient environment for the conveyance of its commuters is beyond- any question.


[36] Put differently, the Defendant owes a duty of care to ensure safe transportation to its passengers, should it fall short of that expectation, its conduct would be negligent.

[37] I thus reach the conclusion that the Plaintiff has discharged the onus of proving his allegations on a balance of probabilities.

[38] In the circumstances, I make the following order:

Defendant is found to be liable for one hundred percent of the Plaintiff's damages.

Defendant to pay Plaintiff's costs, including costs of counsel.



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J.S. NYATHI  
Judge of the High Court  
Gauteng Division, Pretoria

Date of Judgment: 28 April 2022

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