



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

CASE NO: 19508/2021

DELETE WHICHEVER IS NOT APPLICABLE

REPORTABLE: NO

OF INTEREST TO OTHERS JUDGES: NO

REVISED

28 NOVEMBER 2022

JANSE VAN NIEUWENHUIZEN J

DATE

SIGNATURE

In the matter between:

PALE ALPHIOS TSHELETSHE

Plaintiff

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Defendant

JUDGMENT

JANSE VAN NIEUWENHUIZEN J

1. The plaintiff claims damages from the defendant as a result of injuries he sustained on 25 March 2019 when he fell from a train coach.

2. The parties informed the court at the inception of the trial that they have agreed on the separation of merits and quantum and an order for the separation in terms of rule 33(4) of the Uniform rules of court was granted accordingly.

Pleadings

3. The plaintiff pleaded the usual allegations pertaining to the defendant's duty of care in respect of passengers utilising the defendant's trains.
4. In respect of the incident, the plaintiff alleged as follows:

"4. On 25 March 2019 at approximately 20h10, the Plaintiff boarded a commuter train as a lawful passenger at Platform 1 of the Mlamlankuzi station.

4.1 The train coach onto which the Plaintiff embarked was occupied by a number of passengers so there was only standing room available to the Plaintiff.

4.2 As the train was set in motion there was shouting and jostling of persons (commuters), unknown to the Plaintiff, within that coach who were still wishing to disembark.

4.3 In the course of this jostling by such persons, the Plaintiff was dislodged from his standing position and forcibly ejected from the moving train through the open door of the coach, causing the Plaintiff to fall into the gap between the train and the platform ("the incident")."

5. In respect of negligence the plaintiff pleaded as follows:

“6. The injuries sustained by the Plaintiff were caused solely by the breach of PRASA of its legal duty and/or by the negligence of its employees, on one or more of the following grounds:

6.1 PRASA allowed the train to be set in motion without ensuring that it was safe to do so, specifically without ensuring that all persons who wished to embark and/or disembark was given sufficient opportunity to do so;

6.2 PRASA allowed the train to be set in motion without ensuring that all the doors of the train, and specifically the coach on which the Plaintiff was travelling, were properly closed before the train was set in motion;

6.3 PRASA failed to ensure that any, alternatively any adequate measures were taken to ensure the safe passage of passengers on the train concerned;

6.4 PRASA failed to take reasonable measures to ensure that nobody could embark or disembark from the train once it had been set in motion until such time as it had come to a complete stop;

when, by the taking of reasonable steps and/or by ensuring compliance by its employees of PRASA’s own procedures and working rules (operating instructions), it could and should have avoided the occurrence of the incident.”

6. The defendant denied the aforesaid allegations.

Evidence

7. The plaintiff testified that he was on his way to his home in Johannesburg on 25 March 2019. The plaintiff waited at Mlamlankuzi Station from approximately 16:30 and could only board a train some 3½ hours later. The plaintiff testified that the trains were running late and that there were a lot of commuters at the station.
8. Once the train came to a standstill, the plaintiff waited for commuters to disembark from the coach that he wanted to travel in. It was the fourth coach from the rear and the plaintiff succeeded in boarding the coach. Once in the coach the plaintiff moved slowly to the middle of the coach. His back was towards the exit doors which were still open.
9. The plaintiff heard a whistle, which normally entails that the doors of the coaches will be closed shortly. Immediately after the whistle, the plaintiff heard people shouting that they want to get off the train. The plaintiff was jostled and shuffled by the people in front of him that wanted to disembark.
10. The plaintiff lost his balance and tried in vain to grab onto something to prevent him from falling down. Although the whistle sounded, the plaintiff testified that the doors did not close
11. The plaintiff was pushed towards the platform, which is approximately 30 cm lower than the coaches and there is gap of approximately half a meter between the platform and the coaches The last thing the plaintiff can remember is losing

his balance while being pushed towards the platform. The plaintiff woke up in Baragwanath hospital some weeks later. The plaintiff suffered severe injuries. Both his legs had to be amputated, respectively above and under the knee, and his left arm was amputated at the shoulder.

12. During cross-examination it was put to the plaintiff that witnesses will tell the court where the plaintiff fell. The plaintiff answered that the last thing he can remember is falling on the platform. It was also put to the plaintiff that the doors of the coaches were closed prior to the train being put in motion. The plaintiff insisted that the train doors were open.
13. The first witness to testify on behalf of the defendant was Mr Naude, a train driver. Mr Naude operated the train that was traveling in the opposite direction from the one the plaintiff was travelling in on the day in question.
14. Mr Naude testified that he entered Mlamlankuzi train station and noticed a person lying on the trucks going in the opposite direction, i.e. the direction the plaintiff was travelling in.
15. With reference to photos of the platform, Mr Naude testified that the person was some 20 meters before the platform.
16. Mr Naude's evidence in respect of the place where the plaintiff was found, was confirmed by Mr Nhlapo, a security guard that was on duty on the night of the incident.

17. Mr Mofokong, the driver of the train in which the plaintiff travelled and Mrs Mthembu, the metro guard on the train also testified, but their evidence did not take the issue in dispute much further.

Evaluation of evidence

18. I could not find fault with the quality of the plaintiff's evidence and he appeared to be a trustworthy and reliable witness.
19. Mr Strauss, counsel for the defendant, however, submitted that the version of the plaintiff as pleaded in the particulars of claim and as it emerged during his testimony in court, was not supported by the surrounding circumstances.
20. In this respect, the uncontested evidence of Mr Naude and Mr Ndlovu that the plaintiff was found some 20 meters before the platform dispels any notion that the plaintiff fell on the platform in the manner described by him.
21. Mr Kriel, counsel for the plaintiff, to his credit conceded that according to the evidence of the plaintiff he should have fallen either on the platform or on the train truck beneath the train. As alluded to earlier, the space created by the distance between the platform and the coach as well as difference in height between the platform and the coach would have made the inference that the plaintiff fell underneath the train plausible. The injuries the plaintiff sustained also sustain the plaintiff's version.

22. The problem, however, remains the place where the plaintiff was found. If the plaintiff was found a distance from the platform in the direction the train was travelling, one could still draw the inference that the plaintiff was dragged for some distance after he fell underneath the train.
23. The plaintiff's evidence is, however, irreconcilable with the evidence of Mr Naude and Mr Nhlapo.

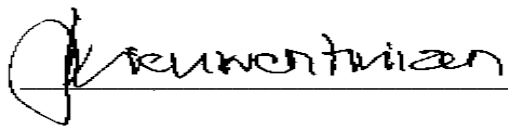
Conclusion

24. I have no hesitation in finding that the defendant has a duty of care towards commuters travelling on its trains.
25. The problem in *casu* is the question of negligence. Having regard to the totality of the evidence, this court is not in a position to find that the defendant was negligent in any of the instances pleaded by the plaintiff.
26. In the result, the plaintiff's claim stands to be dismissed. No reason was advanced why costs should not follow the result and such an order will follow.

ORDER

The following order is made:

1. The plaintiff's claim is dismissed with costs.



N. JANSE VAN NIEUWENHUIZEN

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Date of hearing: 14,15 & 16 November 2022

Date of judgment: 28 November 2022

APPEARANCES

Counsel for the Plaintiff: Advocate H Kriel

Attorneys for the Plaintiff: NemaKonde Attorneys inc

Counsel for the Defendant: Advocate H Strauss

Attorneys for the Defendant: Gildenhuys Malatji Inc attorneys