

SOUTH AFRICA / JUDGMENT

Chaka v Passenger Rail Agency of South Africa (2081/2018) [2019] ZAGPJHC 117 (17 April 2019)

[2019] ZAGPJHC 117

COURT

South Gauteng High Court, Johannesburg

BEFORE

R M Keightley

CASE / FILE NUMBER

2081/2018

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2081/2018

In the matter between:

PENSELE RONALD CHAKA Plaintiff

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA Defendant

J U D G M E N T

KEIGHTLEY, J:

INTRODUCTION

1. It is common cause between the parties in this matter that the plaintiff, Mr Chaka, met with an accident at the Doornfontein station on 15 May 2017 when he attempted to board a passenger train bound for Naledi, Soweto. He has instituted an action against the defendant, the Passenger Rail Agency of South Africa (PRASA) for damages arising from the injuries he sustained in the accident. The parties have agreed to separate the merits of the claim from the quantum. This judgment is concerned only with the aspect of merits.

2. The parties are completely at odds as to the cause of Mr Chaka's accident. He avers that it was the negligence of PRASA employees that caused the accident. More particularly, they breached their duty of care owed to passengers like him by permitting the train to proceed in motion while he was trapped half-way between the entrance/exit doors of a carriage. PRASA denies these averments. It's case is that Mr Chaka tried to board the train after the doors were closed and the train was already in motion. This attempt was unsuccessful, and he slipped and fell from the train.

GENERAL PRINCIPLES

3. This being a delictual action, the plaintiff bears the onus of satisfying the court on all the material elements. In this particular case, it is the first delictual element that is material to a determination of the dispute: viz. the actus reus, or the commission or omission of the particular act on the part of PRASA employees that he avers was wrongful, negligent and caused him harm. The critical question to determine is whether Mr Chaka has established that the relevant PRASA employees acted so as to set the train in motion while he was trapped between the doors of the train.
4. It is a crucial element of his claim that he attempted to board the train while it was stationary and while the doors were still wide open. His case is that the doors closed without warning, trapping him between them, and that the train then proceeded to move away from the platform. PRASA's defence rests on a mutually destructive version, viz. that Mr Chaka attempted to board the train when the doors were already closed, and the train was already in motion. The question, therefore, is whether Mr Chaka has presented sufficient evidence to establish on a balance of probabilities that the PRASA employees acted in the manner that he says they did. If not, there is no actus reus on the part of PRASA upon which a delictual action can be based.
5. In circumstances where mutually destructive versions are presented to the court, certain well established principles apply. The first relevant principle is that:

"Where there are two stories mutually destructive, before the onus is discharged the Court must be satisfied that the story of the litigant upon whom the onus rests is true and the other false. It is not enough to say that the story told by Clarke is not satisfactory in every respect, it must be clear to the Court of first instance that the version of the litigant upon whom the onus rests is the true version ..."[1]

6. The other well-known principle is that laid down in Stellenbosch Farmers' Winery Group and Another v Martell Et Cie and Others,[2] which provides that in determining which of two mutually destructive versions should be accepted, a court must consider the credibility of witnesses, their reliability and the probabilities. The court concluded that:

"In light of its assessment of (these three factors) the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. The hard case, which will doubtless be the rare one, occurs when the court's

credibility findings compel it in one direction and evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors are equipoise probabilities will prevail.”

7. With these principles in mind, I turn to the evidence presented by the parties.

THE EVIDENCE

8. Mr Chaka was the only witness for his case. He testified that he has been a frequent traveler on the trains in question for over 10 years, as he uses the trains to get to and from work every day. On the day of the incident he had been on night shift as a security guard and boarded an early morning train from Elandsfontein station. The train stopped at Doornfontein station at platform 2. When his train stopped he saw a Naledi-bound train at platform 1. He decided to leave the train he was on and to board the Naledi train, as the route home offered by that train was preferable. He showed his ticket to the ticket checkers standing on the common platform between platform 1 and 2. He then approached the last coach of the Naledi train. At this stage, the doors of the train were wide open. He put his left foot into the coach with a view to entering. Suddenly, the doors closed, trapping his leg and the train moved off. He was dragged a short distance before the train stopped, and he fell back onto the rails.
9. Mr Chaka did not see the train guard before he put his foot into the coach. On further questioning, he also testified that he did not hear the guard blowing a whistle before the doors closed.
10. Mr Chaka’s evidence in chief was brief and very simple.
11. Under cross-examination, he confirmed that he was well aware of the safety rules that apply to passengers when they use PRASA trains. He confirmed that he knew that the train guard sounds a bell or whistle to alert commuters that a train is about to depart, and that passengers should embark without delay. He also knew that trains are stationary when the doors are open, and that trains remain stationary while the doors are being closed.
12. When pressed further as to the probabilities of his version, Mr Chaka accepted that when the train doors are open, there is a big gap between them, and that the train in question would have been stationary when he put his foot into the coach. He was asked by counsel for PRASA how long it took for the doors to close and he replied that sometimes it was very quick. He was asked how it was that he had managed only to get one leg into the coach before the doors closed if they were wide open when he put his foot inside. He was also asked why he did not remove his leg when he saw that the doors were closing. Mr Chaka did not have ready answers to these questions except to say that the doors had closed on him almost in a flash.

13. Under re-examination, Mr Chaka reiterated this point. He also testified that usually he would see the doors closing, and that he would not try to board a train if the doors were already closing.
14. Mr Chaka clearly had difficulty answering the more probing questions posed by counsel for PRASA. I gained the distinct impression that he had settled on a particular version of events, and that he intended to stick to that version regardless of improbabilities in it that were pointed out to him. He was not an entirely convincing witness. He was sometimes evasive when faced with difficult questions, resorting to irrelevant answers.
15. PRASA produced two witnesses in defence of their case, both being employees who testified that they were eye-witnesses to the incident.
16. The first witness was Mr Mphendukani, who is employed by PRASA as a protection officer. His job is to protect PRASA's infrastructure, employees and passengers. He was on duty on the day in question and was on the platform between the two trains: the Elandsfontein train that Mr Chaka disembarked from and the Naledi train that he attempted to board. Mr Mphendukani could not recall which train was at which station. According to him, he saw a man running (or jogging, as he later said) from the Elandsfontein train across the platform at an angle towards the Naledi train. The platform distance between the two trains is about 5m.
17. At this stage, the train was already moving, and the doors were closed. The man tried to hold onto the doors of the coach, but he did not succeed. He slipped and fell. Mr Mphendukani went to assist him. He called a controller to report the incident and to alert a shift manager to attend the scene. Under cross-examination, Mr Mphendukani stated that he did not make a statement about the incident. Instead, the shift manager, one Ngobeni did so. Although he has an occurrence book, his line manger did not ask him for it. Mr Mphendukani denied Mr Chaka's version. He was asked how Mr Chaka could have held onto the train if the doors were already closed and the train was moving. He explained that Mr Chaka held onto the door handles. He also testified that it is common for some passengers to hold onto the gutters above the doors when they try to board a moving train, but this was not what Mr Chaka had done. Mr Chaka had not tried to open the doors, he had just tried to hold onto the handles. Mr Mphendukani testified that Mr Chaka was only about 3-5m away from him when he fell.
18. The second witness for PRASA was Mr Tsotetsi, who is a metro train guard. He was the train guard in charge of the Naledi train on the day in question. He testified that his duties are to change the train indicator numbers when the train arrives at certain stations; to blow the whistle to alert passengers; to open and close the doors after the whistle has sounded; and to give the train driver instructions to "ride away". He explained further that he is posted at the back of the train, in a guard's van, next to the last carriage. When his train arrives at his platform, he blows the whistle and opens the doors of the carriage. He is required to stay in his guard's van and to look out of the window to observe up the platform along the length of

the train. The purpose of his observations is to prevent risk to passengers. This is important because the train driver does not share the same view, and can't see what Mr Tsotetsi can see. He is also required to observe the signal lights along the platform to ensure that they are green or orange. Mr Tsotetsi confirmed that once he sees that everyone wishing to board is on the train, he blows his whistle to alert passengers that the doors are about to close.

He then closes the doors, and pushes a bell for the driver to "ride away".

19. This was his evidence as to his general duties and how the train guard system works on PRASA trains. As to the incident itself, Mr Tsotetsi confirmed that he was on duty on the Naledi train when it occurred. The train stopped at Doornfontein station. Passengers alighted, others boarded. When he saw that no-one else was alighting or boarding and that the signal was green, he blew his whistle, pressed the button to close the doors of the train and gave the "ride away" signal to the driver. At this stage he saw some men running along the platform. One of them came to the door of the carriage closest to Mr Tsotetsi's guards van. The doors of that carriage were already closed, but the man took hold of the doors to try to open them. He slipped and fell on the tracks. Mr Tsotetsi then gave a "three whistle signal" to alert the driver to stop the train, which he did.
20. Mr Tsotetsi testified that he was very close to the man when he tried to open the doors and could see very well what was going on. He refuted Mr Chaka's version: he could not have put his foot into the coach as the doors were already closed and the train was in motion when he tried to board.
21. Under cross-examination, he said that he saw some people running along the platform, but could not see how many there were. They started running when he blew his whistle. The train was already moving when the man tried to force the doors on the last passenger coach. He could not estimate how fast the man was running, and he could not recall the clothes he was wearing. When he was asked how the man could have tried to board the train by simply holding onto the door handles, Mr Tsotetsi explained that there is a step (running board) below the doors of the train and that people can stand on this and hold onto the handles and try to open them. He testified that it is not at all uncommon for passengers to do this in order to try to board a train that is already in motion.
22. He strongly denied Mr Chaka's version. He was adamant that he had already blown his whistle and closed the doors when Mr Chaka tried to board the train, which was already in motion. He confirmed that other people had tried to board coaches situated further up the train, and that Mr Chaka was the only one who had fallen. Mr Chaka was right next to his guard's van, very close to him when the incident occurred.
23. In response to a question from me as to the speed at which train doors close, Mr Tsotetsi testified that the speed does vary. However, he said that the doors do not close so quickly that a passenger who has his foot in a coach would not be able to pull it out before the doors closed.

24. Counsel for Mr Chaka pointed out what she said were difficulties with PRASA's witnesses. The first witness had said that the platform was about 5m wide and the second had estimated that it was about 3m wide. In my view, nothing turns on this. No-one actually measured the distance and all witnesses, including Mr Chaka were merely giving their estimates in this regard.
25. Counsel pointed out that Mr Mphendukani had said he saw only Mr Chaka running for the train, whereas Mr Tsotetsi had seen a group of men doing so. Similarly, that Mr Mphendukani said that Mr Chaka held onto the train doors and did not try to open them, while Mr Tsotetsi testified that he had tried to open them. As to the first point of discrepancy raised, Mr Tsotetsi's evidence and that of Mr Mphendukani were both to the effect that only one person tried to board the last coach. It must also be borne in mind that Mr Mphendukani was standing on the platform and Mr Tsotetsi was in the train itself. They were not standing together and were not viewing the same scene from the same angle, or for the same purpose. It is thus not surprising that they might have seen things differently and had different recollections of what they saw in the run-up to the incident. It certainly is not a reason to conclude that these witnesses were untruthful in their evidence. It is important, in my view, that Mr Tsotetsi had a bird's eye view of Mr Chaka from the vantage point of the train itself. I see no reason to reject his evidence that not only did Mr Chaka hold onto the handles, but also that he tried to open them. Mr Mphendukani did not have the same view.
26. Counsel also criticized PRASA's witnesses for not remembering what Mr Chaka was wearing on the day. In my view, this is neither here nor there. Both of these witnesses must see thousands of commuters annually during the course of carrying out their duties. I cannot imagine that it is material for them to recall what a commuter was wearing when he met with an accident while they were on duty.
27. In her closing arguments, counsel for Mr Chaka argued that both of PRASA's witnesses had given generalised evidence based on what commonly occurs when passengers try to board a moving train, rather than testifying as to what they actually saw on the day in question. By implication, counsel for Mr Chaka essentially argued that they had falsified their evidence by giving a version of events that was not true. I cannot agree with this submission. It was not put to either of the witnesses when they were under cross-examination that they were lying in their evidence. At most, it was put to Mr Tsotetsi that he had not seen Mr Chaka trying to board the train. He answered that he had seen him very well because he had tried to board the carriage right next to where Mr Tsotetsi was sitting and conducting his observations. For the rest, both PRASA witnesses had Mr Chaka's version put to them, and they refuted it.
28. It was not placed in dispute that Mr Tsotetsi was on duty as the train guard on the Naledi train on the day in question. It was similarly not disputed that Mr Mphendukani was on duty on the day in question. I accept that both men were there and that they were eye-witnesses

to what occurred. There is no reason to doubt that they had a good view of what occurred. There was nothing in the demeanor of either of these witnesses to suggest that they were being untruthful. They were not evasive in their answers, nor did they hesitate when asked questions under cross-examination. My impression was that they were giving honest evidence based on the best of their recollections from the incident in question. There is no reason to find that they were not credible witnesses.

HAS PLAINTIFF MET HIS ONUS?

29. In order to succeed, Mr Chaka must persuade me that his version of events is true and that the version provided by PRASA is false. In essence, I must be satisfied that Mr Chaka indeed attempted to board a stationary train while the doors were wide open and that, without warning and without giving him the opportunity to remove his foot from the carriage, the doors slammed shut trapping him between them. Thereafter, the train was put in motion, taking Mr Chaka along with it until it stopped and he fell onto the tracks.
30. To accept Mr Chaka's version as being true I must ignore a number of improbabilities. Mr Chaka did not dispute that the normal practice is for the guard to blow a whistle before the doors of a train are closed. He testified that he is aware of this practice. Yet he did not hear a whistle before the doors began to close on him. Either there was no whistle at all, or Mr Chaka did not hear it before the doors began to close. As to the first possibility, Mr Chaka boarded the train in the last carriage right next to where the train guard, Mr Tsotetsi was sitting. It is improbable that in these circumstances, Mr Tsotetsi would have ignored Mr Chaka and closed the doors without blowing the warning whistle while he (Mr Chaka) was in the process of trying to board the train under Mr Tsotetsi's very nose. The same holds true for the second possibility: if the whistle was blown, it is improbable that Mr Chaka would not have heard it when the person blowing it, Mr Tsotetsi was sitting in close proximity to him.
31. The probabilities favour PRASA's version: when the train was still stationary, Mr Tsotetsi blew the warning whistle, and then closed the doors.
32. What do the probabilities say about Mr Chaka's proximity at this time? He says that he put his foot in the carriage while the doors were still open and that they suddenly closed on him, trapping his foot. On his version, he did not see the doors beginning to close, and he had no time to pull his foot out of the carriage. The only manner in which this could have occurred is if the doors closed instantaneously, with virtually no lapse between the time they started to close until they were closed. Yet, we know from Mr Tsotetsi's unchallenged version that despite some variances in closing speed between different doors, they do not close so quickly as to prevent a passenger from being able to remove his or her foot before closure. Why then did Mr Chaka not simply pull his foot out of the doors and place it back on the platform? Had he done this, the doors would have closed and the train proceeded leaving him safely on the platform. The probabilities are that Mr Chaka's

foot was not where he says it was when the doors began to close. In fact, the probabilities are that Mr Chaka's version is simply not true: in all probability, he did not try to board the train while it was stationary and the doors were wide open. If this had been the case, he would in all probability have seen the doors closing and would have taken the natural evasive step of removing his foot from the closing doors and thus removing himself from harm's way.

33. On balance, I find Mr Chaka's version to be highly improbable. It defies logic that he did not see the doors closing and that they closed so fast that his foot was trapped in the manner in which he says it was. I am not satisfied that his version of events is the true version of what occurred. I find it more probable that he did not hear the whistle because he was not in the proximity of the Naledi train when Mr Tsotetsi blew the whistle. He was never trapped in the door of the train as he claims he was. When Mr Chaka arrived at the Naledi station the doors were closed and the train was already in motion. He nonetheless, as passengers often do, tried to board the train by standing on the step and holding onto the handles of the closed doors with a view to obtaining access in the same manner as some of the other passengers succeeded in doing. The probabilities are that he slipped while doing this, and fell from the train onto the tracks.
34. For these reasons, I find that Mr Chaka has failed to establish that the defendant's employees ignored his safety by setting the train in motion while he was trapped between the doors. It follows that his claim must be dismissed.
35. I make the following order:
1. The plaintiff's claim is dismissed with costs.

R M KEIGHTLEY

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

Date Heard: 24 February 2019; 25-27 March 2019

Date of Judgment: 17 April 2019

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Instructed by: Jerry Nkeli & Associates Inc

[1] African Eagle Life Assurance Co Ltd v Cainer 1980 (2) SA 234 (W) at 237 D-H, citing National Employers' General Insurance Association v Gany 1931 AD 187

[2] 2003 (1) SA 11 (SCA)

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