

SOUTH AFRICA / JUDGMENT

Langa v Passenger Rail Agency of South Africa (66663/13) [2017] ZAGPPHC 544 (31 August 2017) [2017] ZAGPPHC 544

COURT

North Gauteng High Court, Pretoria

BEFORE

Tuchten

CASE / FILE NUMBER

66663/13

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO: 66663/13

Not

reportable

Not

of interest to other judges

31/08/17

In

the matter between:

MALOME

JERRY

LANGA Plaintiff

and

PASSENGER

RAIL AGENCY OF SOUTH

AFRICA Defendant

JUDGMENT

Tuchten J:

1. The plaintiff claims damages from the defendant on the ground that on 3 June 2013 the defendant's servants negligently failed to prevent the plaintiff from being pushed out of a moving passenger coach, as a result of which the plaintiff suffered bodily injuries.
2. At the request of the parties, I made an order at the beginning of the proceedings under rule 33(4) separating what are colloquially called merits and quantum. The plaintiff therefore had to prove that the defendant was at fault in relation to his alleged injuries and that they were caused by that fault.
3. The plaintiff was the only witness in support of his case. It is common cause that the plaintiff bought a return rail ticket on the day in question, travelled that morning by rail from Mabopane station to Wonderboom on the Mabopane-Pretoria line to go to work and returned that same evening by rail to Mabopane station. It is also common cause that the plaintiff sustained injuries to his head and back that same evening while in the Mabopane station, from where he was taken to hospital by ambulance.
4. Mabopane station has two sets of platforms for passenger rail purposes. Two of these, numbered as platforms 5 and 6 and in line with each other, are used by trains travelling from Pretoria in a northerly direction to Mabopane. Another two, numbered platforms 7 and 8 and similarly in line with each other, are used by trains travelling from Mabopane in a southerly direction to Pretoria. In effect, platform 6 is an extension of platform 5 and platform 8 is an extension of platform 7. Apparently, platforms 1 to 4 have not yet been built.
5. Mabopane is the last station on this particular line. So the trains arriving at Mabopane have to turn round to go back to Pretoria. To the north of Mabopane station there is a section of track called a balloon which loops round from platforms 5 and 6 and joins with the line which runs past platforms 7 and 8. The trains arriving at Mabopane from Pretoria always use platforms 5 and 6.
6. The trains leaving Mabopane always use platforms 7 and 8.
6. The plaintiff's evidence was that he was a standing passenger in a crowded carriage, second from the front of the train which arrived at Mabopane station during the evening of 3 June 2013. He was in the middle of the coach, stabilising himself by hanging onto a strap attached to the ceiling of the carriage. As the train pulled into Mabopane station, he said, the doors of his carriage opened while the train was still in motion. The occupants surged out, carrying the plaintiff with them and he fell onto the platform, injured himself and lost consciousness and came to in hospital.

7. The witnesses for the defendant however proved, beyond any room for doubt, that the plaintiff fell to the ground on platform 8. One of these witnesses, the train guard Mr Netshibumu, said that the plaintiff might have fallen from the evening train from Mabopane to Pretoria. The other, the security guard Mr Baloyi, said that the plaintiff was walking along platform 8, wearing headphones commonly used for listening to music, dangerously close to the track and was struck by the train leaving Mabopane station.
8. The difficulty facing the plaintiff is that on his version, the plaintiff put himself on the train arriving at Mabopane. He could not have been pushed from the train leaving Mabopane station firstly because on the plaintiff's version he was never on that train and secondly because the commuters on the train on platform 8 were leaving Mabopane and had no reason to surge onto platform 8 shortly after boarding the train which they wanted to take them away from Mabopane and to Pretoria. There is further the unchallenged evidence of security guard Baloyi that he, Baloyi, was visiting platform 8 on patrol because the train leaving Mabopane was the last train of the evening doing so and he wanted to check that all the commuters had left the platform. According to Baloyi, only he and the person he identified as the plaintiff were on platform 8 at the time in question. Moreover, according to Baloyi, passengers could only reach the exit gates from Mabopane station from platform 8 by using the underground subway. So the plaintiff had no business being on platform 8. How he came to be there is unexplained on the evidence.
9. The conclusion, therefore, is that the plaintiff's version cannot be true. He was a vague and unconvincing witness and he gave no reason why he should have been on platform 8 (as he undoubtedly was when he was injured) at all. In the plaintiff's further particulars for trial dated 8 July 2016, the plaintiff stated that his case was that the "Incident took place at Mabopane train station, platform 8." He confirmed in cross-examination that it was he that had supplied this information to his lawyer. The witnesses who were called for the defendant were not beyond criticism but I did not get the impression that they were manufacturing evidence. There is abundant evidence to demonstrate that the plaintiff was injured on platform 8.
10. From this it follows that the plaintiff cannot succeed because his version must be rejected as untrue. In addition, there was no evidence that any servant of the defendant was negligent or that there was any causal connection between such conduct and the plaintiff's injuries. For the purposes of liability such negligence arises if a reasonable person in the position of the defendant would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and would take reasonable steps to guard against such occurrence; and failed to take such steps. It was not even put to any of the defendant's witnesses that any such witness or indeed any other person had in any respect been negligent.
11. I make the following order:

The plaintiff's claims are dismissed with costs.

NB Tuchten

Judge of the High Court

31 August 2017

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