

SOUTH AFRICA / JUDGMENT

Mdlalose v Passenger Rail Agency of South Africa (2019/5898) [2025] ZAGPJHC 637 (25 June 2025)

[2025] ZAGPJHC 637

COURT

South Gauteng High Court, Johannesburg

BEFORE

E Raubenheimer

CASE / FILE NUMBER

2019/5898

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA,

GAUTENG

DIVISION, JOHANNESBURG

CASE

NO: 2019/5898

(1)

REPORTABLE: YES / NO

(2)

OF INTEREST TO OTHER JUDGES: YES / NO

(3)

REVIEWED: YES/NO

25

June 2025

In

the matter between:

MDLALOSE,

JOSEPH

Plaintiff

And

PASSENGER

RAIL AGENCY OF SOUTH AFRICA

Defendant

JUDGMENT

Raubenheimer AJ:

Order

[1] In this matter I make the following order:

1. Judgment in favour of the Plaintiff;
2. Cost of the action on scale C.

[2] The reasons for the order follow below.

Introduction

- [3] The plaintiff was travelling on a commuter train on 12 November 2018 between Naledi and Johannesburg Park Station, for which trip he was in possession of a valid train ticket. The trip entailed that he had to change trains at New Canada Station. As he was unemployed the purpose of his trip was to go and look for employment as a security guard for which he was trained and qualified on level C and D and has been employed as such since 1998. The train that he was travelling on was operated by the defendant.
- [4] At the Ellis Park station he was pushed out of the moving train, fell onto the platform and suffered injuries. He is claiming damages from the defendant for the injuries he suffered as a result of being pushed from a moving train.
- [5] The issue of liability and quantum was separated by a court order on 16 August 2021 and the trial consequently proceeded only on liability.
- [6] The trial was initially set down for 12 April 2022 but was postponed sine die for the parties to conduct further investigations.
- [7] The defendant raised three defences to the particulars of claim namely that the incident did not happen as the plaintiff was not on the train and that the injuries sustained was caused by a fall from stairs, secondly the plaintiff assumed the risk of injury when he voluntarily disembarked from the train whilst the train was in motion and thirdly that the plaintiff was negligent by disembarking from the train whilst the train was in motion and in doing so contributed to his injuries and damage should the court find that the defendant negligently failed in its duty of care towards the plaintiff.

Evidence for the plaintiff

- [8] The plaintiff was the only witness in presenting his case. He testified that he was a frequent user of commuter trains which form of transport he used to travel to and from work.

[9] He boarded the train on the morning of 12 November 2018 at Naledi to travel to Johannesburg Park station to go and look for a job. He had all his training certificates with him.

[10] When he boarded the train it was not full and he found a place to stand in the passage between the benches where other commuters were sitting. As the train travelled towards New Canada it stopped at the stations en route and commuters boarded the train. By

the time the train reached New Canada the train was full. At New Canada he disembarked from the train and embarked onto the train that was bound for Park station.

[11] On entering the train he found standing room about a metre from the door next to the screen attached to the back of the last seats of the row of seats to the right of the door from where he entered. He held onto the overhead straps and leaned against the screen.

[12] The doors of the train did not close when the train departed and remained open throughout the journey. Despite this he did not feel unsafe as he was appropriately far from the door, had a firm grip on the overhead straps and could support his weight against the screen.

[13] The train was full but not overcrowded. Immediately behind him there was nobody else standing as there was sufficient space for him to be able to move around should he needed to.

[14] When the train entered Ellis Park Station, commuters began to push and shove in order to disembark from the train. As he was close to the door, the pushing and shoving dislodged him from his position and he was ejected from the moving train through the open doors. He fell onto the platform and rolled until he bumped against the railing of the stairs. In the fall and the roll he injured his right wrist.

[15] He was dazed and was assisted by unknown hawkers who assisted him to be taken by a taxi to the Hillbrow clinic from where he was transferred by ambulance to the Charlotte Maxeke hospital where he was admitted and diagnosed with a fracture of the right wrist and remained there until 19 November 2018 when he was discharged.

[16] He testified that he did not report the incident to any official employed by the defendant as there were no security guards on the platform where he fell or any other employee of the defendant at the station. When he was assisted to the Hillbrow clinic he passed the ticket offices on the station, there were no ticket examiners present at the office.

[17] He only made a statement to the police about the incident three years after the incident in 2021. This statement was dealt with comprehensively in cross examination as the plaintiff did not mention in the statement where the incident occurred. He only mentioned that he was travelling between Naledi to Park station. His explanation was that the statement was written by the police officer

and not by him.

Evidence for the defendant

- [18] The defendant called two witnesses. The security guard that was on duty on the particular day and the investigator who conducted the investigation of the incident.
- [19] The security guard testified that he was on day shift duty on 12 November 2018. He was posted to Ellis Park and Jeppe. As there was a huge problem with criminality on that particular railway line with stealing of railway line clips and signal cables he was dressed in plain clothes so as not to raise suspicion. His main purpose was the protection of PRASA assets. His subordinate function was to attend to the safety of commuters.
- [20] He denies that there was an incident of a commuter falling from a train on the particular day and refers to the relevant registers which does not contain any reference to an incident where a commuter fell from a train. He confirmed that no such incident was reported to him.
- [21] The investigator testified that he had been involved in the investigation of train incidents for at least the past twenty five years and that he has testified on behalf of the defendant in a court on numerous occasions.
- [22] It was his testimony that he was informed of the incident when the summons and the particulars of claim was served on the defendant. He used the particulars of claim to initiate his investigation. He was not aware that the particulars of claim was amended and had never seen the amended particulars.
- [23] By the time the investigation commenced the contract with the security company who employed the security guards was suspended and he was not permitted to interview the security guard. He did not attend to the scene of the incident and did not enquire as to the existence of any witnesses or obtained any statements of any witnesses to the incident.
- [24] He furthermore did not do any investigations in respect of hospital records either at the Hilbrow Clinic or the Charlotte Maxeke hospital, neither did he enquire about any ambulance records. He did no investigations in respect of the reporting of the incident at a police station despite the fact that the matter was postponed sine die for the specific purpose of further investigations.
- [25] He confirmed that the investigation report is specifically designed to provide investigative guidance for situations where the incident giving rise to the claim is not reported in the PRASA records. It requires the investigator to follow up on 13 investigative elements. The investigator only followed up on 4 of those elements. According to his testimony the remaining elements were not necessary for him to arrive at his conclusion.

[26] His report about the incident mentions that the security guard who was on duty when the incident occurred, has a different surname than the one who testified. He testified that he confirmed the identity of the security guard whose details appear in his investigation report by referring to company records as well as copies of the particular security guard's identity documents. He never contacted the security guard or conducted an interview with him. According to him the security guard that was on duty is the one

whose name appears on his investigation report.

[27] The conclusion of the investigator after he concluded his investigation was that the alleged incident was not recorded in PRASA registers and not reported to PRASA.

[28] What is glaringly absent from the investigation report template is any reference to possible witnesses to the incident. For a template designed specifically for the investigation of a claim where there is no trace of the claim, this is a critical piece of evidence that is not investigated.

Discussion

[29] At the time of the incident the plaintiff was a regular user of commuter trains.

[30] His possession of a train ticket to travel on the specific route on the specific day was not disputed. It was furthermore not disputed that he was unemployed at the time of the incident and that he was looking for work and the best place to do so was in Johannesburg and that he travelled there on a regular basis in his attempts to secure employment. Neither was it disputed that he travelled there in the mornings as it was the best time of the day to find employment.

[31] The probabilities in this regard clearly favours the plaintiff.

[32] The version of the defendant was that the plaintiff was injured at an undisclosed location, in undisclosed circumstances and in an undisclosed manner. The plaintiff steadfastly denied that he was injured in any other manner than in being pushed from a moving train whilst the doors of the train was open.

[33] The version of the defendant in this regard is vague and unsubstantiated and stands to be rejected.

[34] The plaintiff's evidence that the doors of the train was open during the journey was not confronted during cross examination. Neither did the defendant produce any door reports to indicate that the doors were in normal working order.

[35] The probabilities in this regard likewise favours the plaintiff.

[36] That brings me to the second defence of the defendant, namely that the plaintiff attempted to disembark from a moving train and in doing so he accepted the risk of injury.

[37] During cross-examination the defendant changed its version to that by travelling on a train of which the doors were open constituted a danger and should the plaintiff have disembarked from the train at an earlier station and boarded a different train that was safer. The plaintiff was cross examined at length on this aspect and it was put to him that nothing prevented him from doing so

and as he had no appointment for a specific time in Johannesburg he could easily have disembarked from the train and boarded another

train. The plaintiff's response was that he did not feel that he was in danger as he was far enough from the door, he was holding on to the overhead straps, his back was leaning against screen and there was enough open space behind him should he find it necessary to move.

[38] The version as pleaded by the defendant was not put to the plaintiff in cross examination.

[39] The next defence, contributory negligence in that the plaintiff by attempting to disembark was negligent, was likewise not put to the plaintiff in cross examination.

[40] During cross examination the plaintiff was confronted with his allegation that the train was overcrowded and that this increased the risk of potential injury and should the plaintiff likewise have taken another train to limit his risk. The plaintiff stated that the train was initially not full, but as it progressed along the journey the coach in which he was standing filled up.

[41] On being confronted with the discrepancy between "full" and "overcrowded" counsel for the defence explained that "overcrowded" means that there is a stampede. The plaintiff then testified that he was not aware of that meaning of "overcrowded" and that there was no stampede.

[42] The plaintiff's version of the mechanics of how the incident occurred was not disputed. His evidence was that when the train entered Ellis Park station there was pushing and shoving by commuters from the inside of the coach wanting to disembark from the train. The pushing and shoving dislodged him from the overhead belts and he was shoved through the open door whilst the train was entering the station and fell on the platform.

[43] This version was not disputed during cross examination.

Conclusion

[44] The defendant has not succeeded in disturbing the probabilities of the version of the plaintiff. The version of the defendant that simply because the incident is not reported in its records it did not occur is untenable and stands to be rejected. The investigation report is of no consequence in this regard and does not bolster the version of the defendant. The *volenti non fit iniuria* defence is similarly unsustainable as is the contributory negligence defence as none of them are supported by the evidence by the plaintiff.

[45] Due to the above grounds I conclude that the plaintiff has discharged the onus of proof and I consequently make the order as stated in par 1 above.

E Raubenheimer

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION

JOHANNESBURG

Electronically submitted

Delivered: This judgment was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 25 June 2025

COUNSEL FOR THE PLAINTIFFS: Adv DC Ainslee INSTRUCTED BY: Keith Sutcliffe & Associates
COUNSEL FOR THE RESPONDENT: Adv P Modise INSTRUCTED BY: Menzi Vilakazi Inc DATE OF ARGUMENT: 4 February 2025 DATE OF JUDGMENT: 25 June 2025

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