

SOUTH AFRICA / JUDGMENT

Phungula v Passenger Rail Agency of South Africa (12245/2021) [2023] ZAGPPHC 1200 (21 September 2023) [2023] ZAGPPHC 1200

COURT

North Gauteng High Court, Pretoria

BEFORE

Mooki

CASE / FILE NUMBER

12245/2021

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REPUBLIC OF SOUTH
AFRICA
IN THE HIGH COURT OF
SOUTH AFRICA,
GAUTENG DIVISION,
PRETORIA
Case No: 12245/2021
NOT REPORTABLE
NOT OF INTEREST TO
OTHER JUDGES
NOT REVISED
21.09.23

In the matter between:

ZANELE
PRETTY PHUNGULA
Plaintiff
And
PASSENGER
RAIL AGENCY OF SOUTH AFRICA
Defendant

JUDGEMENT

MOOKI AJ

1 The plaintiff says she was injured whilst a passenger in a train operated by the defendant. The parties separated the issue of liability and quantum. The judgement deals with the issue of liability.

2 The plaintiff made her case as follows.

Evidence by Kagiso Ledwaba:

3 He is a regular user of trains operated by the defendant in the Johannesburg and Vereeniging line. He worked at the Vereeniging library at the time of the incident. He used the train regularly to get to work whenever the train was on time. The train between the stations Houtheuwel and Duncanville, the last station before the Vereeniging station was always overcrowded. The doors of the carriages were open when the train was in operation.

4 The plaintiff was his girlfriend at the time when the plaintiff was injured. He purchased tickets for himself and the plaintiff at the Houtheuwel station on the day when the plaintiff was injured. He was accompanying the plaintiff who was going to deliver her CV at the Pick n Pay at the Vereeniging CBD.

5 They boarded the train at the Houtheuwel station, en route to Vereeniging. The train had about 12 carriages when it arrived at the platform. The carriages were packed with commuters. The doors were open when they arrived at the station. He and the plaintiff squeezed onto the train. There were security guards at the Houtheuwel station.

6 The train departed Houtheuwel for Leeuhof. The doors remained open throughout, and the train also remained packed. There were no security officials or ticket sellers at the Leeuhof. The next station was Duncanville.

7 Commuters started pushing from inside the carriages to disembark when the train got to Duncanville. He was being pushed by other commuters. The plaintiff equally was being pushed. The plaintiff was at some point pushed through an open door and fell near the tracks. He could not tell who pushed her.

8 The train was moving slowly when the plaintiff was pushed. He was still on the train after the plaintiff fell off the moving train. He became aware that the plaintiff had fallen. He then jumped through the open door. The train was still moving when he jumped out.

9 Duncanville was a neglected station. There were no security officers or ticket sellers. There were no PRASA personnel. There are firms in the area. The train slowed down towards the station. There was no platform. Commuters disembarked by jumping through the open doors whilst the train was moving.

10 The plaintiff was in pain and could not stand. An old man helped him move the plaintiff away from where she fell. They took the plaintiff to an area not too far from where she fell. He then left to call an ambulance and returned with paramedics. The plaintiff was seated and in pain when the ambulance arrived.

11 He accompanied the plaintiff in the ambulance when the plaintiff was taken to Kopanong hospital. The nurses removed the plaintiff's jeans and covered her with a sheet. The plaintiff was later moved to Sebokeng hospital.

12 He was referred to a document from the hospital. Much of the entry was illegible. He could see reference to "Kopanong hospital" and that the chief complaint was "pushed out of the train." The document recorded the date "5 November 2019" and a time of "08:53."

13 He did not know what happened to the train tickets. The plaintiff had her ticket in her jeans. He had his ticket in his pocket, it was a return ticket. The paramedics, on arrival, cut the plaintiff's jeans at the knee whilst attending to the plaintiff. Hospital officials removed the plaintiff's jeans on the plaintiff's arrival at Kopanong hospital.

14 He gave the following evidence on cross-examination.

15 He had been in a relationship with the plaintiff for a year at the time of the accident. They separated in 2021. He worked at the library, starting work at 7 to 8 in the morning. He used both the train and taxis to get to work. He would take the train if the train was early. He purchased day tickets for the train.

16 He did not see the number of the train in which the plaintiff was injured. The train was travelling to Vereeniging from Johannesburg. The train was usually packed at the Kwaga straat station. The kleingrond station was not in operation. There were bushes at the station. The train was still packed when it arrived at Leeuhof. He could not get a seat, despite some people having left the train. The plaintiff was at the same spot as at the time when boarding the train.

17 He repeated that the train slowed down towards Duncanville station. He did not know the reason. He thought that commuters slowed the train. Passengers jumped out as the train slowed down. The carriage doors remained open since boarding the train. It was not the first time on that day that the doors were open.

18 He repeated his evidence on how the plaintiff was pushed from the train. He estimated that the height from the train floor to the ground when the plaintiff was pushed was 1.2 to 1.4 metres. The train was increasing speed when the plaintiff was pushed.

19 The plaintiff gave the following evidence in chief.

20 She is 24 years old. She is a student, serving an electrical engineering internship. She was injured when she was going to submit CVs in Vereeniging, for a part-time job. She was travelling with Kagiso Ledwaba, her boyfriend at the time.

21 She was not a regular commuter on the train at the time of the accident. They boarded the train at the Houtheuwel station.

22 The carriage doors were open when the train arrived at the Houtheuwel station. She could not get a seat as the train was packed. The train was travelling from Houtheuwel to Vereeniging. It stopped at Leeuhof, where passengers got on and off. The carriage doors remained opened since the train left Houtheuwel station. She did not see PRASA officials or security personnel at the Leeuhof station.

23 The train stopped a bit at the Duncanville station. Duncanville is an old station. There was no one at the station. Some passengers jumped off the train. The train started moving as passengers were jumping. Passengers started pushing and she was pushed out of the train. She fell on her knee and could not stand. She did not know who pushed her. Commuters were pushing to disembark. The train was moving slowly as commuters were pushing.

24 She was not seated on the train. She used a hook for balance. The hook was damaged when she was pushed. She could not stop being pushed. She then fell from the train. She tried to stand after the fall. Her legs were loose, and she could not stand. Ledwaba was on the train when she fell. She did not see Ledwaba when he left the train. He tried to help her to stand but she could not stand. An elderly man came. The elderly man and Ledwaba took her to a safe place.

25 She was taken to a pavement. She tried to stretch her leg but could not. The elderly man told Ledwaba that there were ambulances nearby. Kagiso left for the ambulance and did not take long to return with an ambulance. She was taken to Kopanong hospital. She was later transferred to Sebokeng hospital.

26 She did not recall what happened to her ticket. It was inside her jeans. Paramedics cut her jeans. The jeans were taken at Kopanong hospital.

27 She was referred to a document from the hospital and gave the following evidence. The entry for Kopanong hospital referred to her being admitted at 08:53. She did not recall when she fell. The ambulance fetched her at approximately 07:30.

28 The clinical notes stated that a 20 year-old female was found seating on a pavement. There was also mention of being pushed out of a train. Vereeniging is indicated as the accident location. She told paramedics what happened. The "clinical history" at Kopanong hospital referred to being pushed from a train and falling. She told the staff at Kopanong hospital what happened.

29 She was transferred to Sebokeng hospital later in the day. She was operated on at Sebokeng hospital. Screws were put. She still has the screws. She cannot kneel, cannot run, or walk on steps. She experiences pain in the winter.

30 She did not report the accident to PRASA. Her sister advised that she could claim from PRASA. Her sister researched who could help with the claim.

31 She gave the following evidence on cross-examination.

32 Her boyfriend purchased the tickets. She has used the train about ten times in her life. She boarded a train at the same station less than ten times. The train was always full in the morning. She was aware, before boarding, that the train could be overcrowded. It was sometimes possible to find a seat in an overcrowded train. There were no free seats on the day of the accident.

33 She was standing in the middle of the train, holding onto a belt, when she was pushed from the middle to the outside of the train. The train was travelling from Johannesburg to Vereeniging.

34 She denied that the train was not overcrowded at Houtheuwel station. It was put to her that most commuters disembark at Kwagaa Straat station and that the train was not over-crowded at Houtheuwel station.

35 She denied that the Duncanville station was operational. She maintained that the train at Duncanville did not stop on the platform. The train made a brief stop, perhaps for two minutes. It was put to her that there was a platform because the train had a schedule. She denied that there was a platform at the Duncanville station. The station was used by people working at the firms near the station. Passengers disembarked by jumping out of the couches.

36 The train stopped a bit on arrival at Duncanville station. She did not know whether it was changing tracks. Commuters started pushing as the train was moving slowly.

37 It was put to her that her boyfriend said the station was abandoned and that the train did not stop but moved slowly. She agreed that the station was neglected. She continued that the trains stopped a minute or less. Commuters started pushing when the train moved.

38 She was questioned on various aspects on directions; including the direction of travel of the train and the side of the tracks that she used on arrival at the first station and when she fell. She fell on the side of the track where there are houses. It was put to her that it was impossible to fall where she said she did, because her boyfriend said they were travelling in the opposite direction. She replied that she was giving evidence on what happened to her.

39 Kopanong hospital is less than a thirty-minute drive from Duncanville station. Paramedics, on arrival, cut her jeans, applied a bandage, and took her blood pressure.

40 She repeated in re-examination that the train stopped briefly at Duncanville station, where she was pushed out. She had not been back to the Duncanville station since the accident.

41 The defendant made its case as detailed below.

42 Mr Mortman was the driver of train 9010, used by the plaintiff. He has been a train driver for many years and is familiar with the Johannesburg to Vereeniging route. He explained the procedure followed before a train is put into operation, including testing that doors closed.

43 He explained the various speeds used by the train on the Johannesburg to Vereeniging route. The train travelled at a normal speed of 60 km/hour from Houtheuwel station, and slowed down as it got to Duncanville station. The speed was reduced to 30km/hr. The train does not stop at Duncanville station.

44 He first became aware of the incident two weeks before giving evidence. There was nothing strange on the day. Nothing was reported to him.

45 He gave the following evidence on cross-examination. The train driver sits at the front, focusing attention at the front.

46 The train had 12 coaches and had a length of 234 metres – being from the front of the cab to the rear.

47 The day of the incident was a normal day. He repeated his evidence on inspecting the train. The train departed at 05:30, following the inspection. The maximum speed of the train at Duncanville station is 30km/hr. He does not drive at that speed but will use a speed of between 25km/hr and 30km/hr at the Duncanville station. He never had problems at the Duncanville station.

48 The train was not overcrowded from the Leeuhof station. He could not tell whether some coaches may have been overcrowded.

49 Nothing stood out on 5 September 2019. He could not say how many people were on the train. He was referred to the plaintiff's evidence that the train stopped briefly at the Duncanville station; that the train was very full, and that the plaintiff was pushed off the train. He did not know about the train stopping, and not slowing down. He did not know about other aspects to the evidence by the plaintiff. He would not know whether passengers opened the doors of the train.

50 He accepted that the incident could have happened without him being aware of the incident.

51 He gave the following evidence on re-examination. The train does not stop at Duncanville. Lots of people disembark from Kwagga straat to Vereeniging stations. Many disembark at the Houtheuwel and Leeuhof stations. The Vereeniging station has few people. Commuters do not stand for long from the Leeuhof station. He doubted that there were no seats for the journey between Leeuhof and Vereeniging stations.

52 He continued that he was not familiar with the capacity of coaches. He agreed that commuters would open carriage doors. Metro guards are responsible for ensuring that carriage doors are closed.

Evidence by Ms Rudzani Nancy Tshivhase.

53 She is employed by PRASA as a train guard, since 2013. She explained her duties before and during the journey by a train. Her duties before a train starts its journey starts in the yard and includes preparing the train. Her duties when a train is in service include blowing the whistle and telling passengers that the carriage doors were being closed.

54 She sits at the back of the train during the journey. She opens doors when a train arrives at a station and checks that all embarking and disembarking have done so. She then blows the whistle, stating that doors were being closed.

55 She was asked whether a train can depart without all doors being closed. She replied that she cannot see all doors on a train.

56 She has worked on the Johannesburg and Vereeniging route many times. She was aware that some stations on the route are not operational. A train does not stop at those stations.

57 She first knew of the 5 September 2019 incident in preparation for court proceedings. She was told that someone fell off a train at Duncanville station. She did not remember her whereabouts on 5 September 2019. She was listed as being on duty on 5 September 2019.

58 She gave the following as an indication of the number of people using the train in relation to the identified stations: Kwagga straat did not have many people; Houtheuwel has a few people; the train does not stop at Kleigrond. Pushing by commuters is not possible at Leeuhof because of few people at that station.

59 The train does not stop at Duncanville station. The speed of the train depends on the driver. It is not possible to open carriage doors at this station. Doors open only at stations that are operational.

60 She did not recall whether she ever had an incident like that of the plaintiff.

61 She gave the following evidence on cross-examination.

62 She did not recall much of what happened on 5 September 2019, including the driver and the length of the train. She cannot check that all doors are closed because she sits at the back of the train. She agreed that passengers can keep doors open without her being aware that the doors were open.

63 The train reduces speed at Duncanville station because of the diamond crossing. She did not know the distance of the diamond crossing from the Duncanville station. There is a signal by Duncanville station. The signal is ahead of the diamond crossing, not at the platform.

64 She does not check doors at a station that is not operational. She agreed that there are buildings by the Duncanville station. She did not know what the buildings were for. She did not know that some commuters jumped off a train.

65 She did not know the number of passengers in a carriage. It happens that some coaches are full while others are empty.

66 She could not say whether the plaintiff was pushed off the train at Duncanville. That is because she does not check what happens at a station that is not operational.

Evidence by Siphiwe Ncgobo

67 He is the senior protection official at PRASA. He oversees shifts and supervises all stations. He was unaware of the 5 September 2019 incident. He heard of the incident for the first time in court. The incident was never reported.

68 He confirmed that Duncanville station is not in use and that trains do not stop at the station.

69 PRASA has partnerships with emergency medical service providers and shares information about incidents. No service provider informed PRASA of the incident concerning the plaintiff.

70 He gave the following evidence on cross-examination. He was not on the train on 5 September 2019. He agreed that an incident that was not reported will not be picked up.

Analysis

71 I conclude that the plaintiff boarded a train operated by the plaintiff on 5 September 2018. The defendant hardly challenged any material aspect to the evidence by Ledwaba. Ledwaba was a regular user of the train on the Johannesburg to Vereeniging route.

72 Ledwaba was not challenged in his evidence on the following issues, including no version being put to him: the train was conducted at capacity; the carriage doors remained opened when the train left Houtheuwel station until it got to Duncanville station; there are firms near the Duncanville station; the train slowed down as it got to Duncanville station; some commuters disembarked at Duncanville by jumping off the train, with the train still in motion; the plaintiff was pushed off the train; he himself later jumped off the train; the plaintiff was unable to walk and was in pain after being pushed off the train; he arranged for an ambulance to take the plaintiff to hospital.

73 The plaintiff's evidence was essentially the same as that by Ledwaba. She was challenged in explaining the direction of travel of the train, by being shown several photographs. It was put to her that her evidence was inconsistent with the direction of travel of the train. The plaintiff's evidence on the direction of travel relative to where she fell does not detract from her overall evidence. Her evidence can be ascribed to a person seeking to make sense of direction off a photograph.

74 She was not a regular user of the train and had not used the train services on more than ten occasions in total. She was not challenged that she was going to deliver her CV at the Pick n Pay store in Vereeniging on 5 September 2018, consistent with the evidence by Ledwaba. The direction of travel was clearly that of the scheduled Johannesburg to Vereeniging service.

75 The plaintiff was challenged on her evidence that the train stopped at the Duncanville station. She explained that the stopping was brief. Her evidence on how she fell off the train was consistent with the evidence by Ledwaba, namely that she fell after jostling by commuters who were disembarking by jumping off a moving train.

76 I do not consider that the plaintiff's evidence on whether the train was in motion or had stopped to be a material discrepancy in the totality of her claim. It was not suggested to the plaintiff that the train was stationary when she fell off the train.

77 The entries on the hospital records are an independent corroboration of what the plaintiff said happened. The defendant did not dispute her evidence that she told hospital officials what happened to her; leading to entries by hospital officials that the complaint was that she was pushed off a moving train.

78 It is submitted on behalf of the defendant that the plaintiff and Mr Ledwaba gave mutually destructive versions, as to whether the train slowed down or stopped at Duncanville station, and that the court ought to apply the law as set out in Stellenbosch Farmers Winery.^[1] I do not consider that the plaintiff's evidence merit applying Stellenbosch Farmers Winery. The totality of the evidence shows that the plaintiff boarded a train at Houtheuwel, en route to the Vereeniging station. She was injured in the vicinity of the Duncanville station, when she was pushed off a carriage which had its doors open. I do not consider that her evidence that the train stopped briefly at Duncanville undermines her case that she was injured whilst being conveyed in a train operated by the defendant. The defendant agreed with Ledwaba's evidence that the train does not stop at Duncanville but would slow down.

79 Witnesses for the defendant could not dispute that the carriage doors remained opened as contended for by the plaintiff. Mr Nortman, the train driver, sits at the front of the train. He would not know whether the carriage doors were open or had been opened whilst the train was in motion. He accepted in re-examination that commuters are known to open carriage doors.

80 He agreed that the train slowed down from travelling at 60 km/h to travelling at under 30km/h when getting towards Duncanville. That was because of the diamond crossing near Duncanville.

81 The defendant referenced the decision in South African Rail Commuter Corporation Ltd v Twala^[2] as part of advancing the case that the plaintiff did not make out a case for the relief that she seeks. The defendant conducted its defence on the basis that the train does not and did not stop at Duncanville. The defendant did not put a version to witnesses for the plaintiff that the train was not over-crowded. Ledwaba's evidence that the train was overcrowded was not challenged. Witnesses for the defendant could not give evidence on the capacity of individual carriages. The facts in the present case differ from those that obtain in Twala.

82 I do not put store in the evidence by Mr Nortman about the capacity in the train at the various stations. His evidence on the subject was not put to Ledwaba. It was also not put to the plaintiff.

83 Ms Tshivhase, the train guard, gave evidence that she sits at the back of the train and that she cannot tell whether carriage doors, in fact, remained closed once a train was in motion. She agreed that commuters do open carriage doors. She would not have known whether carriage doors were open when the train got to Duncanville. That is because that station was not in use, and she does not check carriage doors when a train travels past stations that are not in operation.

84 I find that the plaintiff made-out her case, and that she was injured whilst being conveyed on a train operated by the defendant. She was pushed off an open carriage door whilst the train was in motion in the vicinity of Duncanville station.

85 The defendant did not challenge the evidence that the carriage doors remained opened when the train departed from Houtheuwel. The train guard employed by the defendant was sat at the back of the train and could not establish whether carriage doors were open. Employees of the defendant are aware that commuters open carriage doors whilst the train was in motion. The guard engaged by the defendant did not check the doors whilst the train got to Duncanville, because she did not check doors when a train got to stations that are not in operation. The train driver agreed that the train slowed down at Duncanville. There was no evidence to contradict Ledwaba that there are firms near Duncanville and that some commuters disembarked at that station by jumping off a moving train.

86 There were no personnel by the defendant to ensure that commuters did not disembark as described by Ledwaba. There were equally no personnel to see to it that doors to carriages remained closed whenever the train was in motion. The plaintiff would not have fallen through an open door of a moving train had the defendant taken appropriate measures. This is more so given that the defendant has litigated on the similar claims in the past, where a plaintiff complained about being injured on account of an open carriage door, and that the injury would not have occurred had the door been closed.

87 The defendant submits that the plaintiff be found to have contributed to the harm that she suffered. There is no basis for such a finding. The defendant is wholly liable for the injuries sustained by the plaintiff.

88 I make the following order:

- (a) The defendant is liable for 100% of the plaintiff's proven or agreed damages caused by injuries arising from the incident on 5 September 2018.
- (b) The defendant is ordered to pay costs.

Omphemetse Mooki

Judge of the High Court (Acting)

Heard on: 17 – 18 August, 8 September 2023

Delivered on: 21 September 2023

For the Plaintiff:

A J du Toit Instructed by: DSC Attorneys

For the Defendant:

N T Mthombeni Instructed by: Ngeno Mteto Inc.

[1] Stellenbosch Farmers Winery Group Ltd and Another v Martell et cie and Others 2003 (1) SA 11

[2] (661/2010 [2011] ZASCA 170

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