

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

(1) Reportable: No  
(2) Of interest to other Judges: No  
(3) Revised: No

Date: 16/06/2022

  
A Maier-Frawley



**CASE NO: 2018/30427**

In the matter between:

**SIYIMANE, ENOCK BONGINKOSI**

Plaintiff

and

**PASSENGER RAIL AGENCY OF SOUTH AFRICA**

Defendant

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**J U D G M E N T**

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**MAIER-FRAWLEY J:**

1. The Plaintiff instituted an action for damages against the defendant as a result of injuries allegedly sustained by him during a train incident that occurred on 5 June 2018.
2. In order to contextualise the claim juxtaposed against the issues in dispute, it is apposite to refer to the pleadings, as amplified by the plaintiff's reply to

the defendant's request for particulars for trial, including that which the parties recorded in the pre-trial minute and other pre-trial processes. I have highlighted (in bold) salient portions of the Plaintiff's allegations, as are germane not only to the plaintiff's pleaded version/s but to the ultimate issues that fell to be determined at trial.

3. In the particulars of claim, it is alleged that on 5 June 2018, the plaintiff boarded a train at Orlando station, which was heading to Langlaagte station. The coach that he boarded was overcrowded and its doors were wide open throughout the journey. Between Mamlankuzi and New Canada stations, the plaintiff was **ejected out of the moving train through its open doors 'due to a commotion among the passengers of the overcrowded coach who were shoving and jostling for comfort space and exit points next to him.'** He fell on the rails and sustained a fracture on the left knee and '*other bodily injuries.*'<sup>1</sup> At the time of the incident, he was in possession of a valid train ticket.
4. Further allegations, *inter alia*, included that the defendant owed the plaintiff a legal duty alternatively a duty of care to ensure his safety whilst making use of rail commuter services provided by the defendant, which included, amongst other, taking reasonable steps and implementing reasonable measures to ensure the safety of passengers travelling on trains operated by the defendant.
5. In paragraph 12 of the particulars of claim, it is alleged that the defendant breached its legal duty/duty of care, which breach amounted to negligent conduct, amongst others: (i) in failing to ensure his safety on the coach of the train in which he was travelling; (ii) in failing to employ employees or an adequate number of employees '*to prevent passengers in general and the*

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<sup>1</sup> The *other* injuries allegedly sustained in the accident were not pleaded and thus remained undisclosed.

*plaintiff in particular from being injured in the manner in which he was'; (iii) in failing to take steps to ensure that the doors of the train in which he was travelling 'were adequately secured and wouldn't open while the train was in transit'; and (iv) in failing to ensure that the train in which he was conveyed 'was not overcrowded to allow easy passage and access to exit points'.*

6. The defendant's plea essentially amounted to a denial of all allegations in the particulars of claim. Issues in dispute on the pleadings included, amongst others, whether the plaintiff sustained the alleged injuries in a train incident that occurred as a result of the plaintiff having been ejected in the manner alleged from a moving train with open doors on the day in question; whether the defendant breached its obligations or acted negligently in the respects alleged or at all; whether any alleged negligent conduct (or omission) on the part of the defendant was wrongful; and whether the injuries allegedly sustained by the plaintiff were causally connected to the defendant's alleged negligent conduct (or omission).
7. When this matter was certified as trial ready by a court constituted for that purpose, the following issues were referred to trial for adjudication: *'Cause of action, merits and liability of the Defendant towards Plaintiff's proven damages, alternatively, whether there is any contributory negligence towards the incident that should be apportioned between the parties.'* An order was concomitantly granted for the separation of 'merits and/or liability' and quantum in terms of Rule 33(4) of the Uniform Rules of Court. Issues that were common cause between the parties were recorded as: (i) the name and identity of the plaintiff; (ii) citation of the defendant; and (iii) the court's jurisdiction
8. In the joint practice note filed for purposes of trial, the issues in dispute were recorded as follows: *'merits on the cause of action and liability of the*

*Defendant for the Plaintiff's proven damages, alternatively, whether there is any contributory negligence towards the incident that should be apportioned between the parties.'* The recorded alternative was included despite the fact that the defendant had not raised the issue of contributory negligence on the part of the plaintiff in its plea and despite it having recorded in the pre-trial minute that it did not allege contributory negligence, however, reserving its right to amend its plea in this regard. It bears mention that no such amendment was thereafter effected.

9. At the outset of the trial, counsel for the plaintiff and defendant confirmed that the elements of the delictual claim apropos wrongfulness, negligence and causation remained in dispute.<sup>2</sup> The defendant's counsel informed the court that the occurrence of the alleged incident in the manner alleged, likewise remained in dispute. The plaintiff accepted the onus of proving, *inter alia*, that he was ejected from the train in the manner alleged, as well as the elements of the delict, namely, conduct; unlawfulness or wrongfulness; fault; damage; and causation.
10. In the pre-trial minute filed of record, the defendant was requested to set out its version of the incident, which it recorded as follows: *'The defendant has no record of the plaintiff having been injured on its premises or on one of its trains and therefore denies that it is liable for the incident.'*
11. Various factual admissions were sought by the plaintiff at the pre-trial conference held between the parties. The plaintiff recorded certain facts as specified by him in the pre-trial minute, which the defendant was asked to admit. The defendant declined to make the admissions sought. Amongst others, the defendant indicated in the minute that it did not admit:

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<sup>2</sup> Whilst the defendant initially disputed the validity or authenticity of the train ticket discovered by the plaintiff, by the time that oral argument presented by counsel at the conclusion of the evidence, this issue was no longer in dispute.

- (i) that an accident occurred on 5 June 2018 between Mlamlankunzi station and New Canada Station;
- (ii) that the train was overcrowded at the time of the accident;
- (iii) that the doors of the train were open at the time of the accident;
- (iv) that as the train passed each station, the numbers of commuters who boarded the train increased;
- (v) that the train was still in motion when the plaintiff fell or was pushed out of the train;
- (vi) that the plaintiff fell onto the rail track after being pushed out the train;
- (vii) that plaintiff was '**pushed by commuters on the train that began jostling to prepare to alight from the train and scrambling for comfortable seats within the train;**
- (viii) that the plaintiff '*sustained a bodily injury claimed herein which give (sic) rise to its action, as per the hospital records;*
- (ix) that the hospital record[s] note that he fell from the moving train on 5 June 2018 as alleged;
- (x) that the defendant itself, alternatively, its employees were negligent, *inter alia*, in that they failed to ensure that commuters in general and the plaintiff did not fall from or inside the train or to ensure that the train in which the plaintiff was conveyed '**stopped for an adequate time and did not move while the doors were open and the passengers in general and in particular, the plaintiff, was still boarding**'; and
- (xi) that the defendant had a legal duty and duty of care to ensure the safety of commuters using its services, *inter alia*, by implementing and complying with statutory and regulatory safety measures and by

maintaining its train doors to ensure that they were in proper and functioning condition for the safety of passengers/commuters.

12. In its request for trial particulars, the defendant requested the plaintiff to specify the number of the train that was boarded by the plaintiff and to identify the compartment the plaintiff boarded with reference to the number of the coach, or if unable to state the exact coach, to indicate whether he was inside a coach that was located towards the front, rear or middle of the train. In the reply to the trial particulars requested, the plaintiff indicated that he did not recall the number of the train; that he boarded the train between 6h30 – 6h45 am; that he boarded either coach number 4, 5, or 6; and that he did not remember (ie., whether the coach which he boarded was located towards the front, rear or middle of the train), adding, however, that ***'he was in the middle as he [was] preparing to disembark when he and another passenger were ejected or pushed outside the train.'*** The plaintiff was also asked to specify the basis upon which he alleges that the coach he was in was overcrowded. He replied stating that there were *'people all over in the train and there was no space for passengers to pass or manoeuvre freely inside the train without jostling or pushing one another.'* The plaintiff was requested to state the number of persons present in the coach at the time of the incident. His reply was that *'during peak hours, its highly impossible to estimate.'* The plaintiff was also requested to state the number of persons he alleges should have been allowed to board the coach. The plaintiff replied stating that he *'does not have an idea however [the plaintiff] believes that a number that is reasonable would have been that that would have allowed him to move with ease within the coach without jostling and wrestling to disembark, as it was the case in this incident.'*

#### Evidence at trial

13. Two witnesses were called on behalf of the plaintiff where after the plaintiff closed his case. The defendant closed its case without leading evidence in rebuttal of the plaintiff's case.

*Plaintiff's evidence*

14. The plaintiff testified that he purchased a train ticket at Orlando station '*sometime past 6 am*' on 5 June 2018. He produced a train ticket that indicated that same was issued at 12 minutes past 6 in the morning on 5 June 2018.
15. He then boarded a train which had entered the station. He was '*in the middle inside, nearby the door.*' When questioned further, he stated that he was about 3 paces plus an additional 60 to 70 m away from the door of the train, one pace being less than 1 metre in distance. The train proceeded towards Mlamlankuzi station. Upon leaving Mlamlankuzi station, the doors of the train were no longer closed. The train was going to 'Nkowada', where it had to change lanes. *That* is where he lost his balance, as the train was shaking. When asked why the train was 'shaking' and why he lost balance, the plaintiff stated that 'they pushed me'. He fell out of the train, onto the rail tracks and sustained an injury to his left knee. At the place where he fell, there were houses to the right of the rail tracks and bushes to the left of the rail tracks. He fell closer to the side where the houses were located.
16. The plaintiff estimated the distance from the next station to be equivalent to the length of the centre of a soccer field to the goalpost, which the plaintiff's counsel estimated to be approximately 250 metres.
17. After falling, '*the securities from the night shift*' approached him and assisted him by moving him to a place 'nearby the houses' and by phoning an ambulance. The time was 'round past 7 am'. Whilst waiting for the

ambulance to arrive, he called a co-worker, one 'Innocent Sibiya', and requested him to 'pass a message' to his employer. He waited till 'past 7 am' but the ambulance did not arrive. Mr Sibiya arrived later and found him at New Canada road, and thereafter took him to Orlando clinic in his truck.

18. During cross-examination, the plaintiff stated that the train in which he was travelling was 'completely full' and that there were a lot of people surrounding him on both sides of the train doors. At the time that he fell from the train, it was still moving fast and had not yet stopped. He fell onto rail tracks that are positioned on concrete stones. The stones have sharp ends and are not round and smooth. When asked if the stones were sharp enough to cut a person who fell onto them, the plaintiff answered 'yes'.
19. There were two people who helped him. They seemed to be security guards. He does not know if they were Prasa guards. They were in uniform and were 'from the night shift'. They came from the direction of the bushes. They had not come from the train.
20. The height from the coach floor to the ground where he fell is about 336 metres.
21. Further salient aspects of the plaintiff's evidence given during cross-examination will be highlighted when evaluating the plaintiff's case.

*Evidence of Innocent Sibiya*

22. Mr Sibiya testified that he works with the plaintiff. The work for the same 'boss'. He received a 'please call me' message from the plaintiff on 5 June 2018 sometime 'past 7 am'. He called the plaintiff back. The plaintiff informed him that he had fallen from a train and that he was injured in New Canada and requested him to inform 'the boss' thereof. He duly did so.



23. When he arrived at work, Mr Sibiya 'signed in' and left with his work vehicle to perform deliveries. Part of his delivery route was along New Canada road. When he arrived there at about 9 am, he found the plaintiff, who was lying down. There were two security guards with the plaintiff. They had tried to help the plaintiff by phoning an ambulance. Mr Sibiya informed them that he works with the plaintiff. Since the ambulance was 'taking its time', Mr Sibiya decided to take the plaintiff to the Orlando clinic. The place where he found the plaintiff was approximately 200 metres away from the rail tracks.
24. Under cross-examination the witness stated that when he arrived at the scene, the plaintiff could not speak. The plaintiff was crying and in pain so he took him to the clinic. It was put to him that the plaintiff had testified that he had spoken to the hospital personnel and that he was able to answer their questions. The witness commented that 'maybe they gave him (the plaintiff) tablets at the clinic.'
25. He confirmed that he had not witnessed the plaintiff falling from a train and did not know how the plaintiff got injured.

### **Evaluation**

26. It is by now well established that the defendant has a public legal duty to ensure the safety and security of commuters both on its premises and on its trains.<sup>3</sup>
27. In *Mahongwa*<sup>4</sup> the constitutional court had to determine whether Prasa had breached its public law obligations and whether this breach could be deemed wrongful for the purpose of finding PRASA delictually liable. The Court held that '*safeguarding the physical well-being of passengers was a central*

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<sup>3</sup> *Mashongwa v Passenger Rail Agency of South Africa* 2016 (3) SA 528 (CC), para 20; *Rail Commuters Action Group and Others v Transnet t/a Metrorail and others* 2005 (2) SA 359 (CC), par 84.

<sup>4</sup> Quoted in fn 2 above.

*obligation of public carriers, including PRASA. This duty is further reinforced by the specific constitutional obligation to protect passengers' bodily integrity that rests on PRASA as an organ of state'. The court confirmed that Prasa's failure to ensure that a train's doors were closed while the train was in motion constituted negligence. It also found that: "The norms and values derived from the Constitution demand that a negligent breach of those duties, even by way of omission, should, absent a suitable non-judicial remedy, attract liability to compensate injured persons in damages".*

28. Thus, in a claim instituted against Prasa, as in the present case, a person who has suffered damage owing to bodily injury to himself or herself would have to establish, inter alia, that (i) his/her injuries were caused as a result of a reasonably probable connection to a train; (ii) Prasa, its employees (through the doctrine of vicarious liability) or the train driver was negligent either through their conduct or omission to act and (iii) the injury sustained was caused by such conduct or omission to act.
  
29. The plaintiff's evidence in chief was that the train he boarded departed from Orlando Station. When the train reached Mlamlankunzi station, more passengers boarded the coach in which the plaintiff was standing. When the train left Mlamlankunzi station, its doors were no longer closed. The next station along the route was New Canada station. Whilst the train was in motion, headed towards New Canada station, he was standing approximately 3 metres away from the door, in the middle of other commuters. During cross-examination, he confirmed that the train was completely full, with a lot of people surrounding him on both sides. In other words, he was cushioned between passengers who were standing between himself and the doors on either side of the coach. Whilst en-route to New Canada station, at a certain place, which was approximately 250 metres away from New Canada station, the train had to change lanes. When it did

so, the train shook. He lost his balance, was pushed by fellow passengers and he fell out of the moving train through its open doors.

30. During cross-examination, he was asked whether he was the only person who had fallen out of the train on the day in question. He stated that he did not know if other passengers had also fallen out of the train. He conceded however, that he had remained conscious after the fall. When asked whether he saw anyone else on or around the rail tracks after he fell, he stated that he 'did not take notice'. When pressed further on the issue, he stated that he lay down after he fell onto the tracks and that he could 'not remember well' whether he had seen other passengers who had fallen out of the train, as he was 'dizzy at the time'. It was put to him by counsel for the defendant that he would have seen others lying on the rail tracks, if they had falling from the train onto the tracks. He then stated that he 'did not see' whether there were people on the tracks or not, conceding, however, that had he seen other people who had fallen onto the rail tracks, he would have mentioned this. Yet he refused to concede that on an overall conspectus of his evidence, it could be accepted that no one other than the plaintiff had fallen out of the moving train in the alleged incident.
31. When questioned about the security guards who had attended at the scene to assist him, the plaintiff stated that they were in uniform, 'from the night shift.' The guards had not come from the train itself, but had approached from 'the side where there are bushes'.
32. During further cross-examination, the plaintiff was asked to explain certain external contradictions between his oral testimony and his replies to the defendant's request for particulars for trial. For example, in his reply to the request for trial particulars, the plaintiff stated that he was assisted by *fellow passengers who were wearing security clothes*, in contradistinction to being

assisted by unknown third parties, being guards 'from the nightshift' who were not said to be associated with or employed by the defendant and who had in any event not been on the train in question.

33. A further inconsistency that was highlighted during cross-examination concerned the version pleaded in the plaintiff's particulars of claim, namely, that the plaintiff was *ejected out of a moving train through its open doors 'due to a commotion among the passengers of the overcrowded coach who were shoving and jostling for comfort space and exit points next to him, as opposed to the version given in reply to the defendant's request for trial particulars, namely that he was preparing to disembark when he and another passenger were ejected or pushed outside the train.*
34. The version that the plaintiff fell or was pushed out of the train at a time when he was going to disembark, was not fortuitous. The self-same version was repeated a second time in the plaintiff's reply to the defendant's request for trial particulars when particulars were provided about the number of persons he alleges should have been allowed to board the coach in which he was travelling. He stated therein that he *'believes that a number that is reasonable would have been that that would have allowed him to move with ease within the coach without jostling and wrestling to disembark as it was the case in this incident.'*
35. Certain internal inconsistencies in the plaintiff's version were also highlighted in cross-examination of the plaintiff. For example, his evidence in chief was that he sustained an injury to only his knee. During cross-examination he stated that he also sustained injuries in the form of bruises to his upper and lower left arm. When asked to explain the discrepancy, the plaintiff said he did not testify about his other injuries because his legal representative had not questioned him about it, this, despite having been specifically asked in

chief to indicate what injuries were sustained by him. The plaintiff accepted that the hospital records discovered by him recorded only one injury, being an injury to the plaintiff's left knee.

36. When the defendant's counsel put to the plaintiff that it is highly improbable that only he could have fallen out of a fast moving train, given his evidence that he was standing in the middle of other passengers, the plaintiff stated that '*I was in the middle. I had to move as people boarded to such an extent that I moved and moved until I arrived closer to the door as the people were pushing me.*'
37. Whether or not the plaintiff fell by being ejected or pushed out of a moving train with open doors is pivotal to the enquiry as to whether or not the defendant's alleged conduct was both wrongful and negligent and whether the injury sustained by the plaintiff was caused as a result of the defendant's wrongful and negligent conduct.
38. The plaintiff was a single factual witness concerning how he sustained bodily injuries on the relevant date and what caused this. In order to satisfy the onus of proof upon him, the plaintiff was required to adduce sufficient and credible evidence to establish a *prima facie* case. The learned authors Zeffert & Paizes point out that a failure to do so will result in the court not accepting the plaintiff's version even in the absence of evidence in rebuttal from the defendant.<sup>5</sup> Stated differently, it was incumbent upon the plaintiff to prove, on a balance of probabilities, that the case alleged by him 'probably existed'.<sup>6</sup> Since the occurrence of the train incident in the manner alleged was disputed by the plaintiff, the plaintiff had to prove that it is more probable than not that: (i) he fell from a moving train; (ii) the defendant was

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<sup>5</sup> See: Zeffert & Paizes *The South African Law of Evidence* (2009) at 132.

<sup>6</sup> See: PJ Schwikkard SE Van Der Merwe *Principles of Evidence*, 4th ed, at 627 and the authorities referred to therein.

negligent in allowing its train to be in motion whilst its doors were ajar; and (iii) the injuries were indeed caused by the defendant's negligent act or omission.

39. When it comes to the evaluation of evidence, I bear in mind the principles to be applied where a conclusion on disputed issues is required, as enunciated in the case of *Stellenbosh Farmers Winery*.<sup>7</sup>
40. Prior to the trial the parties exchanged replies to and requests for trial particulars, the purpose of which is generally to assist the parties' to understand each other's pleaded cases or for a party to be told with greater precision what the other party is going to prove.
41. The difficulty in the present case is that the court is faced with different versions proffered by the plaintiff, not only between his pleadings and his oral testimony, but also between his oral evidence and the version given in the Plaintiff's replies to the defendant's request for trial particulars. I have already mentioned the contradictions between the plaintiff's oral evidence and the version given in his replies to the defendant's request for trial particulars. The plaintiff contradicted his pleaded case, which was that

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<sup>7</sup> *Stellenbosch Farmers Winery group v Martel Et Cie* 2003 (1) 11 (SCA), par 5, where the following was said:

"...To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness's candour and demeanour in the witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extracurial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. As to (b), a witness's reliability will depend, apart from the factors mentioned under (a) (ii), (iv) and (v) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed issues. In the light of its assessment of (a), (b) and (c) 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 a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors are equiposed probabilities prevail."

passengers of an overcrowded coach were shoving and jostling for comfort space and exit points, by testifying that he fell because when the train shook, he lost his balance and people pushed him out of the coach.

42. The version put forward in the plaintiff's replies to the request for trial particulars was starkly in contrast to that which was averred in the particulars of claim and also that which was provided in oral testimony. Either the plaintiff fell out of a moving train with open doors when he was pushed out by fellow passengers at a point that was nowhere near the station platform and whilst the train was travelling between stations; or he fell and got injured whilst jostling and wrestling to disembark; or he and another passenger were pushed out of the train whilst in the process of disembarking. It is inherently improbable that the plaintiff would have been preparing to disembark or was in the process of disembarking whilst the train was travelling between stations. Accordingly, he could only have been caught up in 'jostling and wrestling to disembark' once the train had reached the station platform, at which point, one would ordinarily expect the train doors to be open. The version that he was assisted by fellow passengers after he fell is consistent with a version that he was injured whilst about to disembark, i.e, when the train had already reached the platform.
43. The plaintiff's version has to be consistent for it to be believed. I cannot speculate which version is correct i.e., was the plaintiff injured whilst disembarking or was he thrown out of a moving train, be it deliberately or accidentally. There are two mutually destructive versions which the plaintiff did not satisfactorily explain, save to state that the version given by him in the trial particulars furnished by him was wrong. The plaintiff was not an impressive witness in other respects too. At times he was evasive during questioning under cross-examination, vacillating between not remembering facts, yet moments later stating that which he said he previously could not

remember, as a positive fact or vice versa. At the conclusion of his evidence, the court sought to clarify aspects of his evidence. He was asked how many people were standing between himself and the train door. He replied that he could not remember. When asked if there were in fact people standing between himself and the train door, he again stated that he could not remember. The further difficulty is that the plaintiff did not report the incident to Prasa at any stage whatsoever, as one would ordinarily expect of someone who had been involved in a train incident. Simple questions that called for obvious concessions were avoided during cross-examination. For example, during cross-examination, the plaintiff stated that he was able to answer questions that were asked of him by medical personnel upon his admission to the clinic. He said that he told the medical personnel how he had sustained his injury. When it was pointed out to him, by reference to different pages, that the hospital records made no mention a history of falling from a train,<sup>8</sup> he stated that he told the nurses what happened and that they 'wrote the wrong thing'. Only to state in the next breath that *'its possible that when they asked me at the time I was still dizzy'*. As I understand it, the hospital records were referred to by the defendant's counsel not for purposes of proving their contents, but simply to elicit the plaintiff's response to what was obviously absent from the records, in testing the credibility of his version at trial.

44. I agree with counsel for the defendant that the version given by the plaintiff in his oral testimony is inherently improbable. If the plaintiff was cushioned between passengers who were standing between the plaintiff and the open train door, one would have expected other passengers to have been ejected from the moving train ahead of the plaintiff. Yet the evidence reveals that this did not happen. Nor did the plaintiff testify that other people were

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<sup>8</sup> The records contain one single cryptic entry that reads: *'Fell from a tra (sic) and landed on the L knee'*. Other entries record, inter alia, the following: *"Patient was pushed from rear. Fell directly onto left knee"*; and *"Fell injured (L) leg"*; or *"?? ... assault or 'Trauma?? Excruciating pain L knee"*.



injured due to being pushed out of a moving train with open doors or even as a result of jostling or wrestling, whether whilst disembarking or because of a commotion among the passengers of the overcrowded coach who were shoving and jostling for comfort space and exit points next to the plaintiff.

45. Due to the nature and extent and the materiality of the numerous inconsistencies, both internal and external, between the plaintiff's versions, coupled with the inherent improbabilities in the version relied on in his oral testimony, as highlighted above, and given the plaintiff's general lack of candour and evasiveness, I am constrained to conclude that he was neither a credible nor a reliable witness. The plaintiff's witness did not assist his case. Mr Sibiya did not know how the plaintiff sustained an injury. He could only testify about what the plaintiff had conveyed to him telephonically, prior to his arrival at the scene, which was some 200 metres away from where the plaintiff says he fell out of the train. It bears mention that the plaintiff did not state in his evidence that he told Mr Sibiya that he had fallen out of a moving train, even though Mr Sibuya gave evidence to that effect. Moreover, in his replies to the defendant's request for further particulars, the plaintiff stated that he '*called his employer and advised that he had been in a train incident and await on (sic) an ambulance which he had been waiting for about +- 20 minutes which prompted the employer to issue a car to collect and transport him to the clinic as the ambulance [was] not coming.*' This version is in juxtaposition to Mr Sibiya's version which was to the effect that he coincidentally drove along New Canada Street, as it was on his delivery route, where he then encountered the plaintiff.
46. For the reasons given, I cannot conclude that the plaintiff discharged the onus that was upon him at the trial.

47. The general rule is that costs follow the result. I see no reason to depart therefrom.
48. In the circumstances, the following order is granted:

**ORDER:**

1. The action is dismissed with costs.



**AVRILLE MAIER-FRAWLEY  
JUDGE OF THE HIGH COURT,  
GAUTENG DIVISION, JOHANNESBURG**

Date of hearing:	11 April 2022
Judgment delivered	16 June 2022

*This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on Caselines and release to SAFLII. The date and time for hand-down is deemed to be have been at 10h00 on 16 June 2022.*

**APPEARANCES:**

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Counsel for Defendant:	Mr EM Mokotedi
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