

Summary of Judgment

Case No:12/4222

Obed Mwezi Mfula v passenger Rail Agency of South Africa ("PRASA')

The plaintiff claimed to have been attacked and robbed by two males on a stationary train operated by the defendant. Whilst fleeing from his attackers, his foot was caught in a gap between the tread plates used to cross over between carriages. He had fallen and hit his head. He had lost consciousness and woke up three hours later and found himself on a train line at Germiston station with his left arm and left leg traumatically amputated.

The plaintiff held the defendant liable for the damages he suffered to his person and his loss of future income due to the amputations. The basis for the claim is that the defendant has a legal duty to ensure the safety of its passengers by providing adequate security measures. Had the defendant done so, the appellant believed the attack could have been prevented and there would have been no need for him to flee thus avoiding the injuries he had sustained.

An Application for Absolution from the Instance was requested at the end of the Plaintiff's case. The test for absolution was applied and the application was refused

The issues in dispute between the parties were whether:

- (a) the plaintiff was a passenger on the train in question
- (b) he was attacked on the train in question;
- (c) he was trapped between the tread plates;
- (d) the plaintiff's injuries were as a result of the defendant's negligence in not providing adequate security for commuters.

Held:

- The evidence pointed to the plaintiff not having been on the train in question.

- The defendant's and the medical evidence pointed to the plaintiff not having been attacked on the train and on a balance of probabilities was a more likely version than that of the plaintiff's.
- The defendant's evidence revealed no fault with regards to maintenance or repairs to the train in question, in particular, any malfunction or faulty tread plates.
- The plaintiff's evidence did not prove that the defendant was negligent in not providing adequate or reasonable security measures for commuters.
- In totality, plaintiff's version was found to be unlikely, highly inconsistent and improbable.

The plaintiff's case was dismissed with costs including the costs reserved by the court on 5 February 2013.