


18/5/17

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 29738/12

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED ✓
18-05-2017	
DATE	 SIGNATURE

In the matter between:

SIBONGISENI BHEKANI BUTHELEZI

Plaintiff

and

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Defendant

JUDGMENT

PETERSEN AJ:

[1] The plaintiff, Mr Buthelezi, instituted a claim for damages in the sum of R4 900 320 against the defendant, the Passenger Rail Agency of South Africa ("Prasa"). Mr Buthelezi alleges that he was a passenger on a train operated by the defendant on 28 June 2010 at approximately 10h30am in possession of a valid train ticket. The train carriage was filled with passengers and whilst in motion he was pushed by certain passengers who were jostling for space, causing him to fall through the open train doors. He claims that as a result thereof he suffered serious injuries.

[2] Mr Buthelezi's claim is predicated on a number of alternative causes of action, the gist being that the sole cause of his fall from a moving train was either the result of the negligence of the conductor or the driver or both by allowing the train to move whilst its doors were open.

[3] The issue of liability was separated from quantum in terms of rule 33(4) of the Uniform Rules of Court.

[4] The defendant disputes that the plaintiff was a passenger on board one of its trains on the Vereeniging-Germiston line on the day in question, as alleged by him or at all. The plaintiff's entire cause of action is predicated on him having been a ticket carrying passenger on a train from Mpilisweni Station on the Vereeniging-Germiston line at around 09h00am on the 28 June 2010 until he was pushed from the train at around 10h30am at President Station.

[5] Mr Buthelezi bears the onus of proving on a balance of probabilities that he was a passenger on a train operated by the defendant between

09h00am and 10h30am between Mpilisweni and President Stations. Mr Buthelezi, on his pleaded version therefore has to prove that he had boarded a train, the time he boarded the train, the route and destination of the train, and the time and place where the incident occurred.

[6] Mr Buthelezi testified that he was on his way to an interview on 28 June 2010 and decided to commute by train. He was not a regular train commuter and only occasionally commuted by train. He arrived at Mpilisweni Station at around 07h30am where he purchased a return ticket from Mpilisweni Station to Germiston Station from officials who emerged from a white vehicle operating mobile ticket machines. He placed the ticket in his wallet and placed his wallet in his back pocket. The train, details of which are unknown to him, arrived at around 09h00am. He enquired and was informed by other commuters that the train was destined for Germiston Station. He cannot recall if the train doors were open when the train arrived at Mpilisweni Station. He boarded the train and the carriage was filled with commuters who were either seated or standing. He stood in the carriage about 1m from the door holding onto a metal rail. The train departed from Mpilisweni Station with the carriage doors open *en route* to Germiston Station, passing approximately 10 or 11 stations. The train stopped at a number of stations and between stations and at times was not travelling at normal speed. The doors of the train remained open throughout the journey. As the train made its approach to the President Station at around 10h30am certain commuters proceeded towards the open doors of the train as the train was still in motion. In this process he was ejected from the open doors and fell onto the platform where he later came to his senses lying face up on his back. His jacket was torn and his bag and wallet

containing his return train ticket was missing. He sustained a serious injury to his left knee associated with bruises to his body. Nobody came to his assistance, whether commuter or personnel of the defendant and he saw no personnel of the defendant for that matter. He made no report at President station about the incident and sought no medical assistance. As a result of his injury he decided to return home and enquired from other commuters how to get back to Mpilisweni Station. He proceeded to an opposite platform where he waited for a train; returned to Mpilisweni Station and there sought the assistance of an unknown male person who accompanied him by taxi to Natalspruit hospital.

[7] Mr Buthelezi was confronted in cross examination with a train schedule which was said to have been in place on 28 June 2010 for trains operating on the Vereeniging-Germiston line and *vice versa*. The train schedule was utilised to highlight to Mr Buthelezi the improbability of his evidence that he was injured at 10h30am at President Station before the train reached Germiston Station. It was put that two trains proceed to President Station during the course of the morning only after arriving at Germiston Station being placed on the Johannesburg or Leralla line and then proceeding to President Station. The plaintiff remained adamant in his resolve that the train he was on stopped at President Station before proceeding to Germiston Station and that he was not at Germiston Station on 28 June 2010.

[8] The defendant relied on the evidence of three witnesses: Mr Daniel Diederichs, Ms Sylvia Mokitlane and Mr Henry Bhila. Mr Diederichs testified that he is employed as a Section Manager: Operations by PRASA. He was

selected for train driver training in 2008 and completed the course in 2009. From 2009 he was assigned as a train driver on a number of routes, including, *inter alia*, the Germiston-Vereeniging route and Johannesburg-Leralla route. A train schedule was adduced as evidence pursuant to an agreement reached at a pre-trial conference held on 21 April 2017. At paragraph 12 of the pre-trial minute it is recorded: "The parties agreed that the discovered documents are what they purport to be without admitting the correctness and contents thereof." Mr Diederichs as a driver on the said routes in 2010 identified the train schedule as being correct for the Vereeniging-Germiston line in 2010 and consequently for 28 June 2010.

[9] Mr Diederichs testified that trains travelling from Vereeniging to Germiston travel on a single line to Elsburg Station. From Elsburg Station there are two lines travelling to Germiston Station; the Germiston Main Line and the Germiston East Cabin Line. Trains travelling on the Germiston East Cabin Line travel directly from Elsburg Station to Germiston Station without passing any of the stations or platforms on the Germiston Main Line. The Germiston Main Line, however, has several stations between Elsburg Station and Germiston Station, of which the last station before Germiston is President Station. According to Mr Diederichs there was no way a passenger travelling to President Station in the morning, on a train on the Vereeniging-Germiston line, would get to President Station without first passing Germiston Station. He explained this with reference to the morning train schedule as follows: Only two morning trains which arrive at Mpilisweni Station, train 0708 at 05h53am and 1110 at 06h50am were scheduled to arrive at President Station at 06h24am and 07h22am respectively. Even with delays of whatever nature the trains would still

proceed on their scheduled routes. These trains would first travel on the Germiston East Cabin Line directly to Germiston Station before being re-routed to travel on the Johannesburg-Leralla line and it is only then that these trains would travel from Germiston Station to President Station. The only train which would accord with Mr Buthelezi's version that the train reached President Station before Germiston station on the Vereeniging-Germiston Line is train 0728 which leaves Vereeniging at 13h25pm, arrives at Mpilisweni at 14h17, Elsburg at 14h39pm and gets to President Station at 14h50pm.

[10] In cross examination Mr Buthelezi was initially told that according Ms Mokitlane no ticket sales take place at Mpilisweni Station as there is no ticket office, which was later corrected to mobile ticket sales as a special action. Ms Mokitlane had no oversight control of Mpilisweni station in 2010 and her evidence did not advance the defendant's case on the main issue in dispute. The version put to the plaintiff in respect of Ms Mokitlane accordingly carries no evidential weight.

[11] The evidence of Mr Bhila, who was assigned as a security officer at President Station on 28 June 2010, similarly does not advance the defendant's case as it is a moot point that Mr Buthelezi did not report the incident to anyone. Mr Bhila's evidence is that he could have been on any of a number of platforms at the time the alleged incident occurred.

[12] Mr Chauke for the plaintiff referred this court to the unreported decision of **Manjo v Passenger Rail Agency South Africa (53316/2013) [2015] ZAGPPHC 128 (12 MARCH 2015)**. At paragraph [11], Kubishi J, held: "The

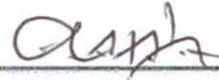
minutes of the pre-trial conference of 2 March 2015 states that the status of documents in the file will be what they purport to be without admitting the correctness of the documents and parties will still be entitled to call witnesses. The information therein is not correct until it is proven by the author thereof. The contents of an unproven document can only be accepted into evidence with the consent of all the parties. It being common cause that the plaintiff's counsel objected to the use of the TCM report by the defendant and no witness was called to confirm the contents of that report the defendant cannot rely in its contents."

[13] The failure to call a witness to testify on the contents of a report in the *Manjo* matter is distinguishable from the matter at hand where a witness Mr Diederichs has been called. Mr Diederichs confirmed not only the correctness of the contents of the train schedule but testified as to his personal work experience according to the said schedule in 2010.

[14] The uncontroverted evidence of Mr Diederichs on the train schedule and the sequence of travel of the trains on the Vereeniging-Germiston line accordingly renders the version of Mr Buthelezi improbable. Mr Buthelezi has in the result failed to prove on a balance of probabilities that he boarded a train on the Vereeniging-Germiston line during the course of the morning of the 28 June 2010, which train proceeded from Mpilisweni station passing 10 or 11 stations before reaching President station where he was allegedly pushed from the train which proceeded further to Germiston Station.

[15] In the result:

Absolution from the instance is granted with costs.



AH PETERSEN

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

Appearances:

On behalf of the Plaintiff: Advocate T. Chauke

Instructed by M.A. Selota Attorneys

On behalf of the Defendant: Advocate SM Tisani

Instructed by Diale Mogashoa Attorneys

DATES HEARD: 24, 25 April 2017 and 17 May 2017.

DATE OF JUDGMENT: 18 May 2017