



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Yende v Passenger Rail Agency of South Africa (39/2014)[2015] ZASCA 49 (27 March 2015)

The SCA today handed down judgment in a matter in which the appellant (the plaintiff in the trial court) sought to hold the Passenger Rail Agency of South Africa (PRASA) liable for damages for injuries sustained by the appellant as a result of the negligence of PRASA. On the basis of evidence before the trial court, the appellant testified that he had sustained injuries to his head, shoulder and arm whilst he was trying to board a train at the Elsburg station in March 2005. Sadly, his right arm had to be amputated as a result of these injuries.

The trial court held that PRASA was negligent with respect to the procedure followed by a guard relating to a train departing from the Elsburg station, which has a curved platform. However, the trial court also found that such negligence was not causally connected to the injuries of the appellant. The trial court accordingly dismissed the appellant's claim for damages.

The appellant's case before the trial court was based only on his own evidence in relation to how his injuries were sustained. He testified in this respect that the train he was attempting to board (almost immediately after it stopped at the station) had jerked and had started to move prematurely, causing him to lose balance and to fall under the train. His evidence in this respect was rejected by the trial court as implausible, given the testimony of employees of PRASA (confirmed in a log book) that the train in question had stopped at the station for a full 45 seconds. As such, the trial court found that the appellant's evidence relating to the train moving almost immediately after it had arrived at the station was implausible and there was no explanation in these circumstances before the trial court as to what happened.

The trial court's findings on the negligence of PRASA was based on the evidence of a guard relating to the procedure followed by her between the time of the arrival of a train at the station and its departure from the curved platform at the station. The guard testified that because of the curved platform she could not observe the entire train at all times, when she caused the door of the train to close and signalled for its departure from the station. On this basis, the trial court found PRASA to have been negligent with respect to the procedure followed by the guard on the curved platform. The

trial court further suggested that the employment of a second person by PRASA would enable PRASA to deal with the habitual problem of commuters on trains behaving irresponsibly by trying to hop on trains at the last minute. However, as already stated, the trial court also found that such negligence was not causally connected to the appellant's injuries.

The majority of the appeal court (Cachalia JA and Mayat AJA, with Zondi JA and Van der Merwe AJA concurring) found that in the absence of a plausible account of how the appellant came to fall under the train, the trial court was correct in not finding any negligence causally connected to the appellant's injuries. As such, the majority of the appeal court dismissed the appeal with costs.

As regards the trial court's finding on PRASA's negligence, the majority of the appeal court also held that the trial court effectively considered negligence in relation to the procedure followed by the guard in the abstract, as there was no plausible account before the trial court of how the appellant was injured. The majority of the court accordingly held in this context that negligence in our law cannot be considered in the abstract without reference to the foreseeable consequences it produces, against which a reasonable person must take precautions. In these circumstances, the majority of the court found that the appellant did not prove negligence either before the trial court.

In a dissenting minority judgment, (Bosiello JA) found that the appellant had established that there was a causal nexus between PRASA's negligent behaviour and the appellant's damages. Notwithstanding the paucity of evidence before the trial court, the minority view was that it was possible for the trial court to make a finding based upon common sense and probabilities. In any event, it was also the minority view that the negligence of the train guard constituted an immediate and direct cause of the appellant's damages. Thus, the learned judge on appeal found that PRASA's negligence together with the appellant's own negligence contributed to the appellant's damages. In these circumstances, it was proposed in the dissenting judgment that the appellant's appeal be upheld with costs and that PRASA be ordered to pay 50% of the appellant's proven damages.

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