



CONSTITUTIONAL COURT OF SOUTH AFRICA

Irvine van Sam Mashongwa v Passenger Rail Agency of South Africa

CCT 03/15

Date of hearing: 6 August 2015

Date of judgment: 26 November 2015

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

Today the Constitutional Court handed down judgment in a matter concerning a claim for damages suffered as a result of injuries sustained by a rail commuter and whether the railway company took reasonable measures to avoid injury to the commuter.

On 1 January 2011, the applicant, Mr Mashongwa, was the only passenger in a coach of a train operated by the respondent, Passenger Rail Agency of South Africa (PRASA). At the time, there were no security guards in the train and the doors of the coach in which he was travelling were left open while the train was in motion. Three unarmed men entered from the adjacent coach, robbed and assaulted Mr Mashongwa and threw him out of the moving train. As a result, he sustained serious injuries and his left leg was amputated.

He instituted action against PRASA in the Gauteng Division of the High Court, Pretoria. He argued that PRASA had been negligent in failing to ensure that the doors of the train were closed and to hire sufficient personnel to ensure the safety of rail commuters. He also contended that PRASA did not exercise the reasonable care required to avoid the incident which resulted in the violation of his right to safety and security.

The High Court concluded that PRASA's failure to ensure that the train doors were closed and to post at least one security guard on the train constituted negligence, which caused Mr Mashongwa harm. It held PRASA liable and ordered PRASA to pay him 100% of the damages proven, or agreed upon, as well as legal costs. PRASA appealed to the Supreme Court of Appeal, which found that there were adequate security measures in place and set aside the order of the High Court.

Before the Constitutional Court, Mr Mashongwa challenged the decision of the Supreme Court of Appeal on the basis that it failed to properly consider the evidence. If the Court had done so, it would have found that closed train doors and the presence of guards on trains would have reduced the risk of an assault and being thrown off the train. PRASA argued that there are reasonable measures in place to ensure the safety of commuters and that it is not under an obligation to guarantee the absolute safety of each commuter.

In a unanimous judgment written by Mogoeng CJ, the Court took the view that the main issue to be decided was 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 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. Taking these factors into account, this Court found that PRASA had breached its public law obligations. 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.

The Court also held that the harm caused was reasonably foreseeable and that PRASA had a legal duty to ensure that the doors were closed while the train was in motion. It further held that Mr Mashongwa would probably not have sustained his injuries had PRASA done so. It concluded that it was wrongful and negligent of PRASA not to observe the important practice of keeping the train doors closed while the train was in motion. Thus, this Court endorsed the finding of the High Court and held PRASA liable for Mr Mashongwa's damages. Accordingly, the application for leave to appeal was granted and the appeal upheld with costs, including costs of two counsel.