



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 11 June 2021

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Passenger Rail Agency of South Africa v Sithuse (Case no 569/2020) [2021] ZASCA 78 (11 June 2021)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding an appeal against the judgment of the full court of the Gauteng Division of the High Court, Pretoria (full court). The SCA set aside the full court's order and substituted it with an order dismissing the claim with costs.

On 22 August 2008 at about 15h55 at Rosslyn Station in Pretoria, Ms Johanna Dipuo Sithuse, then 21 years of age, was hit by a train driven by one Johannes Spies, an employee of the Passenger Rail Agency of South Africa (PRASA). As a result of the collision, Ms Sithuse sustained serious bodily injuries and instituted an action for damages against PRASA in the high court alleging that its negligence caused her injuries. The trial proceeded before Senyatsi AJ who found that she failed to prove that PRASA, or its employees, were negligent and dismissed her claim. Aggrieved by the trial court's judgment, Ms Sithuse appealed to the full court of the same Division. The full court (Kumalo AJ with Mothele J concurring and Van der Westhuizen J dissenting) upheld Ms Sithuse's claim with costs. The majority held that PRASA was negligent by failing to deploy security personnel at the station on the day in question to enforce the rules, which were put in place to safeguard the well-being of commuters.

PRASA appealed to the SCA against the findings and conclusions of the full court. The issue before the SCA was whether the majority of the full court was correct in holding that Ms Sithuse had established that PRASA was negligent and that such negligence caused her injuries. On the central issue as to where at the station the incident occurred and how it occurred the parties' versions were mutually destructive. Ms Sithuse's version was that she was standing at platform 2 of the station waiting for a train to Mabopane. As the train was about to stop some commuters who were intending to board the same train pushed her, she lost balance and fell. She landed on the tracks of the train and the train collided with her. The train driver's version was that he was driving a train from Pretoria North station direction and proceeding in De Wildt station direction. As he approached platform 1 travelling at a speed of 15-20 km/hr he saw a group of women standing in the shade of the overhead pedestrian bridge on platform 1. As he looked closer, he noticed one of the ladies emerge from the group and approach the train by crossing the yellow line safety zone. He applied the emergency brake and sounded the train hooter at the same time. The lady panicked and she tripped. She fell between the tracks and the train collided with her.

The onus to allege and prove negligence on the part of PRASA and/or its employees rested entirely on Ms Sithuse. The evidence she adduced in support of her claim that PRASA and/or its employees were

negligent, was improbable. The train that collided with her was travelling away from what her intended destination was. She had to catch a train travelling from west to east to get to where she intended to travel. The collision occurred on platform 1 used by trains travelling from east to west and not on platform 2 used by trains travelling from west to east. Moreover, she presented no evidence to show that the safety signs at the station were in general disobeyed by commuters and that the security guards were needed to enforce compliance. On her version no negligence could be ascribed on the part of PRASA or its employees. The full court's finding that PRASA was negligent in failing to make security personnel available at the station on the day in question, to monitor the activities of the commuters, could not be supported in the light of Ms Sithuse's improbable evidence. The appeal was upheld.

~~~~ends~~~~