



**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:** 29 September 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*

*Pick 'n Pay Retailers (Pty) Ltd v Pillay (900/2020) [2021] ZASCA 125 (29 September 2021)*

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On 10 December 2015 the respondent, Ms S Pillay (the plaintiff), sustained an axial impact type injury to her head when she and her colleague were struck by a descending automated boom gate (the boom) in the parking area of the hypermarket in Durban North, operated by the appellant, Pick 'n Pay Retailers (Pty) Ltd (the defendant). The plaintiff's colleague suffered an injury around her eye, which caused bleeding. The plaintiff instituted an action for damages in the Durban Magistrate's Court and claimed that the defendant was negligent in that the boom was positioned directly adjacent to a popular pedestrian walkway and the defendant failed to take steps to guard against the danger of the boom descending and striking pedestrians. The magistrate dismissed the defendant's claim, holding that the plaintiff had not proved that she had been injured by the boom or that the defendant was negligent.

The defendant successfully appealed to the KwaZulu-Natal Division of the High Court, Pietermaritzburg (the high court). It held that the risk of the boom descending unexpectedly causing injury to shoppers was reasonably foreseeable, since shoppers usually walked in the road right next to the boom. The court found that the plaintiff failed to observe or pay proper attention to the boom and could have avoided it. The plaintiff was thus contributorily negligent. The high court set aside the magistrate's order and replaced it with an order directing the defendant to pay 60% of the plaintiff's proved or agreed damages, and costs. The Supreme Court of Appeal (SCA) granted the defendant leave to appeal.

Today the SCA dismissed the defendant's appeal with costs. It was conceded on behalf of the defendant that the risk of the boom descending and striking a person was reasonably foreseeable, but it was argued that the risk of injury was negligible. The SCA rejected this argument. The path taken by the plaintiff was the route of choice for shoppers to get to their vehicles. A boom weighing 2.4 kg coming from its raised to its lowered position over a distance of some three metres in two seconds, which strikes a pedestrian without warning, was likely to

cause injury. Moreover, in September 2015 the boom had unexpectedly struck a pedestrian, breaking the frame of his glasses. The only step taken by the defendant after that incident was to order and wait for a four-sided warning sign which stated 'caution, boom overhead'. That warning sign had not been erected in December 2015 when the plaintiff was struck by the boom. Since there was a person operating the boom for entry to the parking area, reasonable steps to avoid the risk of injury would at least have required that a person operate the boom at the exit. The high court was thus correct to hold that the defendant had been negligent.