

Disclaimer: The following is a non-binding translation of the original Hebrew document. It is provided by **Hamoked: Center for the Defence of the Individual** for information purposes only. The original Hebrew prevails in any case of discrepancy. While every effort has been made to ensure its accuracy, **HaMoked** is not liable for the proper and complete translation nor does it accept any liability for the use of, reliance on, or for any errors or misunderstandings that may derive from the English translation. **For queries about the translation please contact site@hamoked.org.il**

At the Jerusalem Magistrates Court

-- stamp--
Jerusalem Magistrates Court
C 7798/04
Estate of Deceased Kam v. Minister of Defense
Opened: June 22, 2004
[illegible]

In the matter of:

1. Estate of _____ Odeh, deceased; ID No. _____
2. _____ Odeh; ID No. _____
3. _____ Odeh; ID No. _____
4. _____ Odeh; ID No. _____
5. _____ Odeh; ID No. _____
6. _____ Odeh; ID No. _____
7. _____ Odeh; ID No. _____
8. _____ Odeh; ID No. _____
9. _____ Odeh; ID No. _____
10. _____ Odeh; ID No. _____

all from 'Askar Refugee Camp, Nablus District,
West Bank
all represented by counsel, Adv. L. Tsemel and/or
F.A. Ahmed and/or L. Habib
on behalf of HaMoked: Center for the Defence of
the Individual
of 2 Abu Obeida St., Jerusalem
Tel: 02-6273373, Fax: 02-6289327

The Plaintiffs

v.

Ministry of Defense - State of Israel

represented by the State Attorney's Office
29 Salah al-Din St., Jerusalem

The Defendant

Statement of Claim

1.
 - a. Plaintiff 1 is the estate of the deceased, _____ Odeh, who passed away on April 16, 2002 (hereinafter: the Deceased).
 - b. Plaintiff 2 is the Deceased's widow.
 - c. Plaintiffs 3-10 are the children of the deceased.
 - d. Plaintiffs 2-10 are the Deceased's heirs and the claim on behalf of the estate of the Deceased is filed through them (all together shall hereinafter be referred to as: "the Plaintiffs").
2. The Defendant was the agency in charge of public order and safety at the time and place relevant to the incident described hereafter.
3. The Defendant acted via its soldiers and/or police officers and/or other agents (hereinafter: "the Defendant's agents"), and it is directly and/or vicariously responsible for any act and/or omission on their part.
4. The incident:
 - a. On Sunday, April 16, 2002, at 2:20AM, the Deceased went up to the roof of his two story house in order to check a water leak coming from the roof.
 - b. The Deceased was hit by shells and shell shrapnel, fired at him by Apache helicopters belonging to the Defendant. These caused severe injuries to the Deceased's abdomen and other parts of his body.
 - c. Despite an eight hour surgery he underwent at Rafidia Hospital in Nablus in order to save his life, the Deceased died of his injuries.
 - d. The Deceased's two sons, _____ and _____, who went to the roof to help the Deceased, also sustained severe injuries and were hospitalized at a field hospital set up on that date by UNRWA at the 'Askar Refugee Camp.
5. The Plaintiffs will argue that the Defendant bears direct and exclusive responsibility for the incident as a result of its acts and/or omissions which constitute wrongful death and/or assault and/or breach of statutory duty as detailed below.
6. The Plaintiffs will argue that the details of the incident constitute assault, in the meaning of the term under Section 23 of the Tort Ordinance [new version] and/or negligent assault in the meaning of the term in the aforesaid Ordinance.
7. The Plaintiffs will argue that the wrongful death caused by the Defendant occurred while its agents were performing tasks given to them by the Defendant as part of an employer relationship between the Defendant and its agents and/or as part of a relationship of subordination between the Defendant and its agents.
8. The Plaintiffs will argue that the Defendant bears direct and/or vicarious responsibility for the incident as a result of the actions and/or omissions of the Defendant and/or its agents toward the Plaintiffs, including assault and/or trespass and/or negligence and/or breach of statutory duty, as detailed below.

9. The Plaintiffs will argue that they did not know and/or lacked the capacity to know the circumstances which led to the incident and that the incident is more consistent with the conclusion that the Defendant and/or its agents failed to exercise reasonable care than with the conclusion that there was no negligence on their part that led to the incident which is the subject of this Statement of Claim.

Therefore, the Defendant bears the onus of proving that there was no negligence for which it is liable in connection with the incident that led to the Plaintiffs' damages, in accordance with Section 41 of the Tort Ordinance [new version] 5728-1968.

10. In this Statement of Claim, any act and/or omission attributed to the Defendant is equally attributed to each of its agents enumerated in paragraph 3 above and any claim of liability on the part of the Defendant is equally made with respect to each of its agents enumerated in paragraph 3 above.
11. The Plaintiffs shall add that the incident was exclusively the result of negligence and/or lack of care and/or recklessness, expressed *inter alia* in all and/or some of the following acts together, separately or alternately – as relevant:
- a. The Deceased was killed without having presented any danger to the Defendants.
 - b. The Deceased was killed premeditatedly and in cold blood.
 - c. The Defendant and/or its agents and/or its representatives and/or its delegates did not act as a reasonable person would have acted in the circumstances of the matter.
 - d. The Defendant did not adequately supervise and monitor the actions and/or conduct of its agents who caused the incident and did not do everything in its power and/or everything it should have done and/or everything necessary and/or everything required in order to prevent the assault and the damages it caused and/or acted recklessly and with lack of care and/or did not supervise the individuals under its responsibility.
 - e. The Defendant gave its agents missions without full and/or partial supervision and/or monitoring as required of reasonable government agencies with respect to actions carried out on the ground.
 - f. The Defendant and/or its agents exceeded their authority and acted in breach of the law and/or provisions and/or instructions and used unacceptable methods.
 - g. The Defendant did not take care to clarify to and/or define and/or guide its agents who were involved in the incident and/or failed to provide them with proper guidance and/or definitions and/or instructions about executing its instructions with respect to their conduct while on duty.
 - h. The Defendant and/or its agents abused their power and used force against the Deceased without lawful justification and/or reasonable cause and/or disproportionately without justification and/or cause, all with the Defendant's knowledge and/or approval.
 - i. The Defendant and/or its agent acted recklessly and/or with lack of care and/or with lack of respect toward the Plaintiffs and toward the Deceased's bodily integrity and health and in a manner inconsistent with the conduct expected from reasonable and trained employees and guards in similar circumstances.

- j. The Defendant and/or its agents did not do everything in their power to prevent and/or minimize the harm to the Deceased and the Plaintiffs.
12. The Plaintiffs will argue that the wrongful death and/or assault committed by the Defendant and/or its agents constitute negligence *per se*. In addition to the Defendant's direct liability for the incident, it is liable in connection therewith also since the soldiers were its employees and/or agents and/or delegates.
13. The Plaintiffs will argue that any statutory provision designed to limit their procedural and/or substantial rights is null and void and/or must be revoked as it breaches fundamental legal principles and/or fundamental rights and/or is wrongfully discriminatory.
14. The medical situation of Plaintiff 2 following the incident:
- a. Subsequent to her husband's death, Plaintiff 2 has been suffering from mental issues affecting her functioning.
 - b. Medical documents in the possession of Plaintiff 2 lead to the conclusion that there is room to retain a medical expert with respect to the severe harm sustained by Plaintiff 2. Plaintiff 2 reserves the right to provide additional medical documentation inasmuch as such may be obtained and present a medical opinion in accordance with the law.
 - c. Plaintiff 2 is currently unable to function quite significantly and as a result she and Plaintiffs 3-10 have sustained severe financial damages.
An application for an exemption from providing a medical opinion on behalf of Plaintiff 2 is attached.
15. As a result of the incident and the Deceased's death, the Plaintiffs sustained damages as detailed below, (including the Plaintiffs' claim as heirs and future dependants and their claim for direct damages they suffered). The Deceased would have helped provide for the family in future, as is the custom, and his wrongful death caused the Plaintiffs to lose his future support.
- a. Special damage:**
1. Funeral, burial, headstone expenses:
The Plaintiffs and their relatives remained in their home for the 40-day mourning period. They hosted many visitors. The Plaintiffs incurred many expenses due to the funeral, burial, headstone and the refreshments served to the individuals who visited them daily for a lengthy period of time. The sum of these expenses, including interest and linkage, is estimated at:
20,000 shekels
 2. Loss of earnings:
50,000 shekels
 3. Medical expenses and travel:
20,000 shekels
 4. General expenses for arranging and registering the death with the Ministry of Interior, filing and monitoring a police complaint etc.:
10,000 shekels

Total special damages: 100,000 shekels

b. General damage:

1. Loss of future earnings.
 2. Future medical expenses.
 3. Future travel expenses.
 4. Future third party assistance.
 5. Pain and suffering.
 6. Loss of future support from the Deceased.
 7. Loss of income during "lost years".
2. [sic] The Honorable Court has material and geographic jurisdiction to hear this claim.

Therefore, the Honorable Court is requested to summon the Defendant and order it to make full payment for expenses and damages incurred by the Plaintiffs with interest and linkage from the date on which the claim was filed until the date full payment is made.

Additionally, the Honorable Court is requested to order the Defendant to pay for Plaintiffs' legal fees and trial costs plus VAT in accordance with the law.

[signed]

F. Abu Ahmed, Adv.
Counsel for the Plaintiffs