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At the Jerusalem Magistrates' Court

Jerusalem Magistrates' Court
C 11387/07
Mr. M. Livni
Filing date: October 24, 2007
Legal procedure: regular

In the matter of: **Mr. Shatat (ID No. ____)**
Resident of the village of Yatta, District of Hebron
Represented by Adv. Muaiad Mi'ari
2 a-Zahra Street
POB 1634, Jerusalem 91016
Tel: 02-6262638 Fax: 02-6289109

The Plaintiff

v.

1. Menachem Livni (I.D. 007407646)
Kiryat Arba 305/5.

2. State of Israel

Represented by the
Tel Aviv District Attorney's Office
1 Henrietta Szold Street, Tel Aviv

The Defendants

Nature of Claim: Property Damage and Personal Injury – not pursuant to the Victims of Traffic Accidents Law
Amount of Claim: 85,500 NIS.

Statement of Claim

1. The Plaintiff is represented in this claim by the office of the undersigned on behalf of HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger (hereinafter: HaMoked), whose address for the reception of court documents is as specified above.
2. The Plaintiff, born on April 20, 1968, is married and resides in the village of Yatta in the District of Hebron. On all of the dates relevant to this petition, the Plaintiff worked in hauling goods and earned a total of approximately 1,500 NIS a day.

3. Defendant 1 (hereinafter: Defendant 1) is a resident of Kiryat Arba, and was one of the leaders of the “Jewish Underground” in the 1980’s. He has a very long criminal record which includes the offenses of murder and laying explosives with the intent of causing death to Palestinian residents of the Occupied Palestinian Territories (OPT). Defendant 1 was convicted of grave offenses and received a life sentence. However, following requests for a pardon submitted to the President of Israel, his sentence was commuted to a mere seven years.
4. Defendant 2, the State of Israel (hereinafter: Defendant 2) is and was at all times relevant to the claim the body overseeing and/or supervising and/or responsible for and/or in charge of the actions and/or omissions of the security forces acting on its behalf, including soldiers and/or Border Police officers and/or other security forces (hereinafter: the **police officers** and/or **Border Police officers**), and is also responsible for the actions and/or omissions of various authorities that act on its behalf including, *inter alia*, the Firearms Licensing Authority and the investigating authority working on its behalf.
5. Furthermore, at all times relevant to the claim, Defendant 2, the State of Israel, had effective control of the West Bank and was responsible for order and security in the region, and for the lives, safety, and property of its residents.

The Incident:

6. On June 8, 2003, at 7:30 AM, or thereabouts, while the Plaintiff was riding in his brother’s truck in the area of Bani Na’im in the direction of the Adora settlement, he saw a man, later identified as Defendant 1 (hereinafter: Defendant 1) who had gotten out of a vehicle that was stopped at a distance of a few meters.
7. With no reason, and without prior warning, Defendant 1 opened fire at the Plaintiff from a firearm he was carrying.
8. Fortunately for the Defendant, the shots did not hit him, but various sections of the truck in which he was riding were hit. The Plaintiff got out of the truck immediately and began running for cover from the shots fired by Defendant 1.
9. Due to and because of the above incident, the Plaintiff suffered from shock and anxiety, and remained stunned and frightened for some time. About ten minutes later, a military jeep, apparently carrying soldiers, passed by. The Plaintiff stopped the vehicle and informed the soldiers of what had occurred asking that they take immediate steps to apprehend the offender.
10. Unfortunately, the soldiers did not heed his request, and after the Plaintiff informed them that he had not been directly harmed by the shooting, and was not physically hurt, the soldiers told him “then fix your vehicle and go home”!!!
11. It was only after Plaintiff and his representative intervened, and a complaint was filed with the Hebron District police on the day of the incident, that an investigation was opened, leading to the apprehension of Defendant 1, and ultimately to his criminal prosecution. As described below, the Defendant was convicted and sentenced to four months’ imprisonment to be served in community service.
12. It must be emphasized that despite the serious record of Defendant 1, and his repeated attempts on the lives of residents of the OPT, some of which were, unfortunately, successful, and despite the fact that

he was sentenced to life in prison due to and because of the harm he caused to Palestinians in the course of extremely grave incidents, Defendant 2 allowed him to carry a firearm and, in this way, allowed him directly and/or indirectly to continue to endanger and cause harm to innocent Palestinians.

Legal Proceedings Conducted against Defendant 1:

13. Due to and because of the above incident, Defendant 1 was charged in the District Court with the offenses of intentionally causing damage to a vehicle and committing a reckless and negligent act. A charge asserting that racism was the motive for these actions was added to the indictment (CC 173/03).
14. After the case was heard before a single judge, and when it reached the summation stage, the Honorable Court observed, following a comment made by parties' counsel, that the entire proceedings had been conducted without jurisdiction as the case should have been brought before a panel of three judges, rather than a single judge as it had been. Due to and because of this, the Court declared a mistrial.
15. Following the aforesaid mistrial, a new indictment, omitting the charge of racial motive for the Defendant's actions, was filed with the Magistrates' Court (CC 2785/04). At the end of this proceeding, the Honorable Court (Honorable Justice Dotan) decided to acquit Defendant 1 of the offenses attributed to him.
16. An appeal against the ruling of Honorable Justice Dotan was filed to the District Court which overturned the ruling and decided to convict Defendant 1 of the offenses attributed to him (CrimA 9652/05). The Court of Appeals decided to remand the case to the Magistrates' Court for sentencing.
17. On December 4, 2006, the Court decided to sentence Defendant 1 to a prison term of four months to be served in community service and a four month suspended sentence.
18. An appeal against the sentence issued by the Honorable Court was filed to the District Court (CrimA 40044/07). The Court decided to uphold the sentence.

The Plaintiff's Complaints and their Treatment by the Department for the Investigation of Police (DIP):

19. On the day of the above incident, the Plaintiff approached the Hebron District police and filed a complaint concerning the incident as above described.

A copy of the receipt confirming the filing of a complaint is attached and marked Appendix A.

20. On December 23, 2003, following the appeal of the Plaintiff to HaMoked, HaMoked wrote the Hebron District police requesting to receive an update on the investigation that was underway and details regarding the file that had been opened.

A copy of HaMoked's appeal is attached and marked Appendix B.

21. On December 25, 2003, Mr. Shlomo Efrati of the Hebron District police replied stating that following the Plaintiff's complaint, Criminal File no. 2201/03 had been opened and transferred to the Jerusalem District Attorney's office where it was assigned the number 3071/03.

A copy of Mr. Efrati's reply is attached and marked Appendix C.

22. Following receipt of the information on the cancellation of the criminal proceeding that was conducted before the Honorable District Court as above described, HaMoked appealed to the Deputy State Attorney at the Ministry of Justice, asking whether they were planning to renew the criminal proceeding against Defendant 1. On July 14, 2004, Mr. Assaf Rosenberg, a Senior Deputy at the State Attorney's Office replied that a decision had been made to submit the file to the Jerusalem Magistrates' Court but to drop the motive of racism!!

Mr. Rosenberg's reply is attached and marked Appendix D.

The Legal Argument:

The Burden of Proof:

23. The Plaintiff will claim that **whereas** all and/or most of the factual infrastructure concerning the incident that is the subject of this claim and/or the precise circumstances that caused damage to the Plaintiff is/are and/or should be under the direct and/or indirect control and/or known to and/or in the possession of the Defendants and/or their representatives and had not yet been given in its entirety to the Plaintiff and/or his representative, and **whereas** the findings of the investigation that was conducted by Defendant 2 following the incident, including the findings of the Israel Police investigation and/or investigations by other parties acting on behalf of Defendant 2, were not executed in an appropriate and lawful manner and/or were never fully completed and/or in any event were not sufficient to ensure the full exhaustion of the investigation procedures the purpose of which is to ensure the prosecution of all parties responsible for the occurrence of the above events, and **whereas** the conduct of the Defendants themselves or that of the parties authorized to act on their behalf exacerbated the damage caused to the Plaintiff, **then** in light of the aforesaid, the Defendants must be regarded, under the special circumstances of the incident at hand, as having caused the Plaintiff "evidentiary damage", whether directly or through parties authorized to act on their behalf, in all matters related to proving the Plaintiff's claim as required and, therefore, the "order" by which the evidence in this case is presented should be reversed such that Respondent 2 presents its evidence first and the Plaintiff presents his evidence thereafter.

The Liability of the Defendants:

24. The Plaintiff will claim that the incident and its resulting damage were caused due to the negligence and/or recklessness and/or lack of caution and/or lack of judgment and/or omissions and/or breach of legal obligations by the Defendants and/or one of the Defendants and/or their agents and/or individuals acting pursuant to their powers and/or under their instructions and/or under their supervision and/or on their behalf and/or any of them as manifested in the following actions and/or omissions:
 1. Performing of acts that a reasonable and sensible person would not have performed in the same circumstances and/or failure to perform an act that a reasonable and sensible person would have performed in the same circumstances, or failure to employ professional skills, or exercise sufficient caution in the performance of an occupation

that a reasonable, sensible person professionally trained in the same occupation would have employed or exercised in the same circumstances;

2. Assault and/or unlawful use of force of any kind against the body and/or life and/or security and/or property of a person;
3. A prohibited action or omission that unlawfully caused damage to a person;
4. Negligently harming a person;
5. Exceeding authority while causing severe physical harm and/or property damage and/or severe harm to the health of a person and/or causing his death;
6. Failure to act as a reasonable person and/or entity would have acted in the circumstances of the situation to prevent the incident and the damage;
7. Breach of trust;
8. Unlawful assault and/or battery causing harm and injury with malice.
9. Use of force and/or firearms and/or other unlawful and/or disproportional and/or inappropriate means in circumstances that do not justify their use;
10. Exceeding authority while causing grave harm to life, property, dignity and emotional well-being;
11. Exceeding authority while performing an arbitrary act that violates the rights of another contrary to command directives and/or instructions and/or guidelines and/or regulations and/or other statutes;
12. Granting a license to carry a firearm in circumstances that do not justify and/or prohibit same;
13. Negligently discharging an order or directive, or negligence in the fulfillment of one's duty;
14. Performing a fraudulent action or an action that constitutes a breach of trust that harms the public and/or looting.
15. Deliberately refraining from fulfilling a lawful duty that did not involve great danger;
16. Unlawful use of force and/or threats of any kind against a person's physical integrity and/or life and/or emotional well-being and/or property;
17. Willful violation of a statutory provision through an act prohibited by that statute, or by refraining from performing an act required by the statute;
18. Breaching a directive issued by an official or a person acting in an official capacity who has the relevant competency;
19. Looting;
20. Performing a prohibited act or omission that unlawfully caused harm to the physical integrity and/or life and/or emotional well-being of a person.
21. Negligently causing harm to a person;
22. Performing an arbitrary act that violates the right of another through abuse of power;
23. Inappropriate conduct;
24. Negligence exhibited by Defendant 2 in relation to an individual towards whom it has, under the circumstances, a duty not to act as it did, thus causing damage to that individual;
25. Failing to prevent crime and failing to maintain public order and the security of life and property;
26. Willful violation of a statutory provision through an act prohibited by same statute or through refraining from performing an act required by same statute;
27. Breaching a directive issued by an official or a person acting in an official capacity who has the relevant competency;
28. Conduct breaching orders issued by the senior command and/or orders issued by the IDF General Staff, and/or regional commands and/or district commands, and/or orders given lawfully and/or the statutory duties that are intended to defend and protect the possessions and property of persons such as the Plaintiff;

29. Failure to discharge lawful duties and/or designated mission to ensure the security of residents of the Area including that of the Plaintiff;
 30. Failure to anticipate the incident and/or the chain of events that caused the aforementioned damage, despite the fact that it should have been anticipated, and failure to take any and/or sufficient action to prevent the occurrence of the incident and/or to prevent the damage and/or to reduce it;
 31. Failing to act as a responsible, cautious, and sensible party would have acted and done in the circumstances of the location, the matter and the incident in order to prevent the occurrence of the incident;
 32. Acting contrary to the rules of safety and breaching their lawful duty;
 33. Acting negligently and/or unlawfully by allowing Defendant 1 to carry a firearm and carry out his unlawful acts;
 34. Failure to ensure and/or instruct and/or supervise compliance with statutory provisions and/or statute and/or regulations regarding issuance of licenses to carry a firearm, and/or improper supervision and/or guidance concerning said statutory provisions, and/or failure to provide any and/or sufficient safety instructions and/or failure to ensure that people receiving guidance from it are aware of or comply with said instructions;
 35. Failure to do everything in their power and/or everything they were required to do and/or everything appropriate and/or necessary for preventing the incident and its damage and/or reducing it, and/or acting recklessly and without caution and failing to pay attention to and/or supervise the persons under their responsibility;
 36. Acting negligently in permitting Defendant 1 to unlawfully harm the life and/or emotional well-being and/or property and/or health and/or dignity of the Plaintiff;
 37. Failing to fulfill their duties under the law to ensure the safety of the residents of the OPT;
 38. Acting negligently and/or unlawfully in the investigation of the incident and in the treatment of the persons responsible;
 39. Violating the Plaintiff's constitutional rights anchored in Basic Law: Human Dignity and Liberty, and creating a "constitutional tort";
25. The Defendants have an obligation to disclose all documents, reports, specifics, investigations, photographs and data relating to the incident that is the subject of the claim. The Defendants are also requested to disclose all of the security forces' field activity logs for the day of the incident. In light of the aforesaid, the Plaintiff reserves the right to raise additional and/or supplementary and/or cumulative and/or alternate arguments following Defendants' submission of documents relating to the incident which is the subject of the claim.

Damage Sustained by the Plaintiff:

26. Due to and because of the aforementioned incident, the Plaintiff suffered from anxiety, fear, panic and shock. The aforementioned grave incident that, fortunately for the Plaintiff, did not take a much heavier toll, caused him severe emotional distress and since the incident he has suffered from ongoing depression, inability to concentration, unpleasant memories and nightmares.
27. The Plaintiff re-lives the aforementioned serious incident every day, constantly imagining where he would be had the shots hit him and not just his vehicle.

28. The assault of the Plaintiff by Defendant 1 has left him emotionally scarred, as evident from the anguish and mental suffering the Plaintiff has suffered since the incident. The Defendants' actions and/or omissions trampled on the dignity of the Plaintiff, degraded him and broke his spirit.
29. The Plaintiff continues to feel that he has no value as a human being and that his life, property and dignity have been forsaken to outlaws simply because of his nationality. The Plaintiff continues to feel threatened and experiences fear and panic to this day.
30. Due to and because of the aforementioned incident, the Plaintiff has been forced to undergo psychological examinations and treatment and it is expected that these will continue given the emotional constraints and disabilities he still suffers.
31. Moreover, due to and because of the aforementioned incident the Plaintiff is often forced to receive help from members of his family and it is expected that he will continue to receive help in the future in light of the limitations he continues to suffer from.
32. Moreover, due to and because of the aforementioned incident, the vehicle belonging to the Plaintiff's brother was damaged as above described, and he was forced to repair it at a great expense.
33. The Plaintiff's damages are as follows:

A. Special damages:

1. Medical expenses	10,000 NIS
2. Travel	5,000 NIS
3. Past assistance from external parties	10,000 NIS
4. Loss of past income	50,000 NIS
5. Vehicle repair expenses	<u>10,500 NIS</u>
Total	85,000 NIS

B. General damages:

1. Pain and suffering
 2. Assistance from external parties
 3. Loss of future earning capacity
 4. Medical treatment and future travel
34. In regard of the contemptuous and unlawful conduct of all and/or any of the Defendants and/or their agents as described in detail above, the Honorable Court is requested, in addition to the above, to rule that the Plaintiff be awarded significant punitive damages reflecting the gravity of the actions and/or omissions of the Defendants and/or their agents.
 35. The Honorable Court has the material and geographic jurisdiction to preside over this claim in consideration of the amount of compensation claimed and the area of the action and/or omission and/or the location where the damage was caused.

36. Therefore, the Honorable Court is hereby requested to summon the Defendants and order them to jointly and severally pay the Plaintiff all the damages (as specified above) in addition to trial costs and legal fees, including linkage differentials and interest under the law, from the date of the incident until the date of actual payment.

[signed]

Muaiad Mi'ari, Adv.
Counsel for the Plaintiff