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At the Magistrates Court in Jerusalem

CC 2899/98

In the matter of:

Abu Rian

of Halhul, Hebron district

represented by attorneys Hisham Shabaita and/or
Eliahu Abram and/or Hala Huri and/or Ali Haider
of HaMoked: Center for the Defence of the Individual
founded by Dr. Lotte Salzberger
4 Abu Obeidah St., Jerusalem
Tel. 02-6283555; Fax 02-6276317

The Plaintiff

v.

The State of Israel

represented by the Tel Aviv District Attorney's Office
(Civil Department)
1 Henrietta Szold St. Tel Aviv 64921
Tel. 03-6970282; Fax 03-6918541

The Defendant

Nature of the claim: **Damages for Bodily Injuries**

Amount of the claim: **NIS 75,000**

Complaint

1. The Plaintiff was born in 1974, and is a resident of the village Halhul.
2. The Defendant, the State of Israel, was at all times relevant to the Complaint in charge of the actions of IDF soldiers and/or other security personnel who acted on its behalf in the area of the village Halhul in the District of Hebron (hereinafter: the Defendant).
3. On 4 October 1992, between 20:00 and 21:00 or thereabouts, while the Plaintiff was attending his cousin I.'s wedding ceremony at the neighborhood reception courtyard (hereinafter: the courtyard), together with many other guests, he heard that another cousin of his, S., had been kidnapped near the entrance to the courtyard by

approximately four people in civilian dress, who were driving a Peugeot bearing local license plates. The Plaintiff later learned that the persons in civilian dress were *mistaarevim* [undercover soldiers] and/or other Israeli security forces personnel.

4. The Plaintiff, together with many other local residents, stepped out of the courtyard to check whether his cousin S. had indeed been kidnapped. Several moments later, a commercial Volkswagen and/or another vehicle with local license plates (hereinafter: the car) came to a stop near the entrance to the courtyard, a few meters away from the many local residents who had gathered at the place, including the Plaintiff.
5. Four armed men in civilian dress immediately stepped out of the car and started shooting, without any warning or discrimination, toward the group of local residents (hereinafter: the soldiers). The Plaintiff ran in an attempt to evade the soldiers' fire. Several meters away, the Plaintiff felt that he had been shot in the right thigh and the right hand, and fell down.
6. A few minutes later, the soldiers left the scene of the incident, and another group of soldiers arrived. The Plaintiff was treated by a military paramedic, taken to the main road in Halhul and from there rushed in a military ambulance to Alia Hospital in Hebron.
7. On 8 November 1992, the Plaintiff filed a complaint on the incident at the Hebron police station. In a letter dated 18 January 1994, the Military Advocate of Central Command informed the Plaintiff that the investigation file had been closed, on the grounds that the Plaintiff had been injured "**after having been identified as taking part in breaches of the peace**".

It should be noted that from a perusal of the investigation material, it appears that the investigation authorities took statements from not even one of the Palestinians who were present at the scene except the Plaintiff, even though many local residents, having been invited to the wedding as described above, were present at the scene and witnessed the incident.

The Soldiers' Liability

8. The Plaintiff shall claim that the incident and the damage therefrom were caused due to the negligence and/or lack of caution and/or recklessness and/or disregard and/or per se negligence of the soldier and/or soldiers who committed the shooting that caused the accident, as expressed in the following acts and/or omissions, namely that they:
 - a. Used live fire in circumstances that did not justify such use.

- b. Fired indiscriminately and/or without justification in a residential area, while endangering human life.
 - c. Opened fire from a short range and/or from a range endangering human life and/or in violation of the open-fire regulations.
 - d. Used weapons negligently and/or in violation of the regulations on the use of live fire.
 - e. Opened fire while facing no danger at all and/or no material danger and with no justification or cause to open fire.
 - f. Opened fire without receiving a permit from the soldier authorized therefor.
 - g. Acted against high command orders and/or against the general staff orders and/or against IDF commanding and/or regional orders and/or against the open-fire regulations and/or against orders given to them by law and/or against statutory duties designed to safeguard the body and health of persons of the Plaintiff's type.
 - h. Failed to do everything within the power and ability of reasonable soldiers to prevent the shooting incident.
 - i. Failed to act as would have a reasonable soldier under the circumstances.
9. In the event that any act or omission constituting the negligence that caused the accident was performed or caused by any other person who acted in the Defendant's name and/or in its service and/or on behalf thereof and/or as its agent, then the Defendant bears vicarious liability for the consequences of the accident and for payment of the damage caused to the Plaintiff.

The Defendant's Liability

10. The Defendant is liable for the negligence of the soldier and/or soldiers who committed the shooting, in their capacity as its agents and/or as having acted on its behalf.
11. The Defendant is liable for the incident and for the damage therefrom due to the negligence and/or lack of caution and/or negligence per se on the part of itself and/or its agents and/or another acting on its behalf, as expressed in the following acts and/or omissions, namely that it:
- a. Failed to supervise and/or to properly supervise all of the acts and/or omissions of IDF soldiers in the territories in general and/or in the region and/or at the scene of the incident in particular.

- b. Failed to fulfill its lawful duties and/or missions, and to ensure the safety of the residents of the region, including the Plaintiff.
 - c. Failed to foresee, although it ought to have foreseen, the incident and/or the course of events which led to the incident and/or foresaw the incident and/or the course of events that led to the incident and yet did nothing and/or did not do enough to prevent the incident and/or prevent the damage and/or mitigate the same.
 - d. Dispatched an unskilled force and/or a force lacking the appropriate commanding function to deal with a breach of peace incident, if any took place.
 - e. Failed to clarify the open-fire regulations to the soldier and/or soldiers.
 - f. Failed to observe and/or teach and/or supervise the observance of the open-fire regulations and/or improperly supervised and taught the open-fire regulations and/or gave no and/or insufficient safety instructions and/or failed to ensure that persons dedicated to the instruction thereof, and particularly the soldier and/or soldiers who committed the shooting, were familiar with or observed the same.
 - g. Failed to do everything in its power and/or everything it should and/or ought to have done and/or was required to do in order to prevent the incident and the damage therefrom and/or acted recklessly and incautiously and failed to pay attention to and/or watch over the persons under its charge.
 - h. Acted other than as a responsible, cautious and prudent person would have acted under the circumstances of the location, the subject matter and the case to prevent the occurrence of the accident.
 - i. Acted in violation of the rules of safety and in per se negligence.
 - j. Acted negligently by allowing the shooting soldier and/or soldiers to shoot unlawfully.
 - k. Acted negligently by allowing the soldier and/or soldiers to use a weapon unlawfully.
12. The Plaintiff shall further claim that he neither knows, nor can know the real circumstances that caused the incident, but since the weapon with which the Plaintiff was shot was under the control of the soldier/soldiers who are the Defendant's agents, the circumstances of the case are more consistent with the Defendant's negligence

than with its non-negligence. The circumstances of the case are subject to the rule of *Res ipsa loquitur*, and it is the Defendant that has to prove that the accident occurred through no negligence on its part.

13. Alternatively, the Plaintiff shall claim that the Defendant is required to prove that the accident occurred through no negligence on its part, because the accident was caused by a “dangerous instrumentality” owned and/or controlled by the soldier and/or soldiers, the Defendant’s agents, and the “dangerous instrumentality” rule applies.
14. The Plaintiff does not know the identity and/or names of the soldier and/or soldiers and/or security forces personnel who caused the damage, and the Defendant is charged with disclosing the same together with all the documents and reports pertaining to the incident which is the subject matter of the Complaint. The Defendant is further requested to disclose all field operations records of the security forces from the day of the incident.

The Plaintiff’s Damage

15. As a result of the soldiers’ acts and/or omissions, the Plaintiff was injured, as aforesaid, in the right thigh and the middle finger of the right hand.

The Plaintiff was rushed, as aforesaid, to Alia Hospital, where he was hospitalized for three days.

At the hospital, the Plaintiff underwent debridement of the wound in the middle finger, and a suture to the cut created as a result thereof.

A photocopy of the medical certificate is attached to this Complaint as *Appendix A* and constitutes an integral part hereof.

16. As a result of the incident, the Plaintiff suffered pain in his right thigh and hand for approximately one month, during which time the Plaintiff was bedridden and devoid of any ability to move freely.

During this time, the Plaintiff was unable to work as a farmer on the family’s land in the village of Halhul, as he had done before the incident.

17. Currently, as a result of the incident, a small scar has remained on the Plaintiff’s body above the middle joint of the third finger of the right hand, and two scars (entry wound and exit wound) on the right thigh.

18. Following is a specification of the damage caused to the Plaintiff as result of the incident, reparation of which he is claiming from the Defendant:

Special Damage

a.	Past medical treatment and travel expenses:	NIS 5,000
b.	Third party help:	NIS 10,000
c.	Lost earnings:	NIS 10,000
		NIS 25,000

19. In addition, the Plaintiff shall claim that he is entitled to compensation for his general damage, which includes the pain, suffering and distress he suffered as a result of the incident, and he is fixing his claim due to this damage at the sum of *NIS 50,000*.

The Plaintiff's total damage amounts to the sum of *NIS 75,000*.

20. All arguments made in this Complaint are argued cumulatively or alternatively or complementarily, all as the context prescribes. Wherever an argument is made herein as to the burden of proof or the dereliction, such argument is made against the Defendant and against its respective employees, representatives and agents, all as prescribed by the context.

21. The Honorable Court has the territorial and the subject matter jurisdiction to hear the Complaint.

22. The Honorable Court is therefore moved to summon the Defendant and to charge it with payment to the Plaintiff of his damage in full, as specified above, and to charge the Defendant with payment of the trial expenses, and all in addition to indexation and interest from the date of the incident until the date of actual payment.

_____ *[signed]* _____

Hisham Shabaita, Att.
Counsel for the Plaintiff

Jerusalem, 4 February 1998