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At the Magistrates Court in Jerusalem

CC 4209/96

In the matter of: _____ **‘Abdallah**

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

The Plaintiff

v.

The State of Israel

represented by the Tel Aviv District Attorney's Office
(Civil)
1 Henrietta Szold Street Tel Aviv 64921
Tel. 03-6970222; Fax 03-6918541

The Defendant

Nature of the claim: **Bodily Injuries**

Amount of the claim: **NIS 509,368**

Amended Complaint

1. The Plaintiff was born in 1952, is married with 9 children, and is a resident of the village Tubas in the District of Jenin.
2. The Defendant, the State of Israel, is and was at all times relevant to the complaint in charge of the actions of IDF soldiers in the area of Tubas in the District of Jenin.

The incident

3. On 3 March 1989 at 13:00 or thereabouts, the Plaintiff traveled with four people in a car (hereinafter: the Car) driven by _____ Mar'i in the area of Tubas.
4. When the Car approached the Mekhora junction at approximately 60-70 km/h, where approximately 8 soldiers and one female soldier stood at a hitchhiking station, one of the soldiers suddenly lifted up his weapon, fired towards the Car and hit the Plaintiff's leg (hereinafter: the Accident), and all without any justification.

5. Alarmed and terrified, the driver of the Car continued driving until he reached the first military base (Beqa'ot), where the Plaintiff received first aid from a military paramedic, and was transferred in a military ambulance to the Civil Administration in Nablus. From there the Plaintiff was transferred by the Red Cross to the Al-Ittihad al-Nisa'i hospital in Nablus.
6. The Plaintiff and the other passengers that were in the Car were questioned about the incident at the Civil Administration in Nablus, and their testimonies were taken.
7. It should be noted that after the Plaintiff was released from Al-Ittihad hospital, he was neither arrested nor indicted.

The soldiers' liability

8. The Plaintiff shall claim that the Accident 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 who committed the shooting that caused the Accident, as expressed in the following acts and/or omissions, namely that he:
 - a. Used live ammunition in circumstances that did not justify such use.
 - b. Opened fire from a short range and/or from a range endangering human life and/or in violation of the open-fire regulations.
 - c. Used live fire negligently and/or in violation of the regulations for the use of live fire.
 - d. Opened fire while facing no material danger and with no justification or cause to open fire.
 - e. Fired without permission from the soldier authorized therefor.
 - f. 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 him by law and/or against statutory duties designed to safeguard the body and health of persons of the Plaintiff's type.
 - g. Failed to do everything within the power and ability of a reasonable soldier to prevent the shooting incident.
 - h. 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 were performed and/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.

10. The Defendant is liable for the negligence of the soldier who committed the shooting, in his capacity as its agent and/or as having acted on its behalf.

The Defendant's liability

11. The Defendant is liable for the Accident and for the damages therefrom due to the negligence and/or lack of caution and/or negligence per se of its own and/or of its agents and/or of another 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 Accident 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 Accident and/or the course of events which led to the Accident and/or foresaw the Accident and/or the course of events that led to the Accident and yet did nothing and/or did not do enough to prevent the Accident 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.
 - 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 who carried out 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 Accident and

the damages 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 sensible 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 to shoot unlawfully.
 - k. Acted negligently by allowing the soldier to use fire unlawfully.
12. Alternatively, the Plaintiff shall claim that he neither knows, nor can know the real circumstances that caused the Accident, but since the weapon with which the Plaintiff was shot was under the control of the soldier who is the Defendant's agent, 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 needs 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, who is the Defendant's agent, and the "dangerous instrumentality" rule applies.

The Plaintiff's injuries

14. The Plaintiff was injured by a gunshot to the left thigh, and suffered a crushed fracture of the femur. He was hospitalized at the Al-Ittihad hospital in Nablus for a period of 80 days, during which he was treated with local dressings and pulling, followed by physiotherapy.
15. The fracture healed in an osseous connection, but with a slight deformation and a shortening of approximately 3.0 cm of the leg; in addition, foreign objects remained inside.
16. The Plaintiff was discharged from the Al-Ittihad hospital with orders to rest for six months, in which he was confined to bed.
17. The Plaintiff received ongoing medical treatment and his condition was monitored at the "Al-Madina al-Tibbiyya" hospital in Amman.
18. Prior to the incident, the Plaintiff was in good physical and mental health.

19. As a result of the incident and the injury, the Plaintiff suffered from local pain and sensitivity, and from limping. The said pain and limping now make it difficult for the Plaintiff to exert physical effort.
20. The Plaintiff is suffering and will suffer chronic pain, and will require medication for the rest of his life. Following the Accident and as a result thereof, the Plaintiff is suffering a mental crisis which is causing him considerable suffering.
21. A specification of the Plaintiff's orthopedic disability appears in the opinion of Dr. _____ Frenkel of 29 September 1996 (which is attached to this complaint as an integral part hereof and marked Exhibit A), according to which a permanent disability degree of 15% was determined for the Plaintiff.
22. Prior to the injury, the Plaintiff worked as a plasterer and earned NIS 1,700 per month. However, as a result of the Accident the Plaintiff has been unable to continue working as a plasterer, and has no other profession. Since the injury, the Plaintiff has not worked at all.
23. Following is a specification of the damage suffered by the Plaintiff due to the Accident:

Specific Damages

a.	Past lost earnings	NIS 210,000
	(Based on NIS 100 per day, 25 days a month)	
b.	Past medical expenses	NIS 20,000
c.	Past travel expenses	<u>NIS 10,000</u>
	Total specific damage	NIS 240,000

General Damages

a.	Pain and suffering	NIS 200,000
b.	Loss of earning capacity	NIS 69,368
	Total general damages	NIS 269,368

Total specific and general damages NIS 509,368

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

In view of the aforesaid, the Honorable Court is moved to summon the Defendant and to charge it with payment to the Plaintiff of his damages in full, as specified in Article

23 above, and to charge the Defendant with payment of trial expenses and VAT as set out in the law, and all in addition to indexation and interest from the date of the event.

Jerusalem, today 20 March 1997

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Hala Huri, Att.

Counsel for the Plaintiffs