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At the Magistrates Court in Jerusalem

CApp 12262/03

In the matter of:

1. F. Al'adem

of Beit Ula – Hebron

represented by attorneys Leena Abu-Mukh Zuabi (Lic. No. 33775) and/or Yossi Wolfson (Lic. No. 26174) and/or Adi Landau (Lic. No. 29189) and/or Manal Hazan (Lic. No. 28878) and/or Shirin Batshon (Lic. No. 32737)

of HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger, Reg. Assoc.
4 Abu Obeidah Street, Jerusalem 97200
Tel. 02-6283555; Fax. 02-6276317

The Plaintiff

v.

1. Sergeant Ilya

2. Corporal Charlie

3. Corporal Naor

4. The State of Israel – Ministry of Defence

all represented by the Tel Aviv District Attorney's Office
(Civil Division)

1 Henrietta Szold Street, Tel Aviv 64921
Tel: 03-6970222 Fax: 03-6918541

The Defendants

Nature of the claim: **Tortious, Bodily Injuries**

Amount of the claim: **Up to the Court's Jurisdiction**

Complaint

1. The Plaintiff, who was born in 1974, is a resident of Beit Ula, a village in the Hebron District.
2. A. Defendants 1-3 served, at the times relevant herein, in the regular army of the Israel Defence Forces and took part in the incident described below.

The full particulars of Defendants 1-3, which include, *inter alia*, their identity numbers and addresses, are in the possession of Defendant 4. Thus, the Plaintiff will request that Defendant 4 assist the Plaintiff in serving the complaint on them.

- B. Defendant 4, the State of Israel, made a commitment in the framework of HCJ 3109/96 to disseminate a procedure regarding the handling of residents of Judea and Samaria arriving at a checkpoint under medical emergency, and to inculcate the procedure among soldiers stationed at checkpoints, in general, and Defendants 1-3, in particular. Also, Defendant 4 was, at all times relevant herein, the party responsible and/or operating and/or supervising the activity of IDF soldiers and the activity of Defendants 1-3 in the incident described below.
- 3.
- A. On 25 August 1998, during the evening, the Plaintiff – who was in her ninth month of pregnancy – felt as if she were about to give birth. The Plaintiff called her mother-in-law and the latter summoned her two sons – the Plaintiff’s husband, J., and the Plaintiff’s brother-in-law, A.. The four of them departed for the hospital in Hebron.
 - B. When they reached the Beit Kahil checkpoint, Defendants 1-3 stopped the four of them. Defendants 1 and 2 went over to the vehicle they were in and informed the passengers that, because a closure was in force, they would not be able to cross the checkpoint and enter the city. The Plaintiff’s brother-in-law explained to the soldiers that it was an emergency and that a woman in the car was in labor. Despite the explanation, the Defendants refused to let them pass.
 - C. While the persons in the car tried to convince the Defendants that there was an emergency, Defendants 1 and 2 shined a flashlight on the Plaintiff, who was sitting in the back seat, to see if she was indeed pregnant.
 - D. Based on their superficial examination, Defendants 1 and 2, who were joined by Defendant 3, determined that the claim that she was in labor was baseless, and ordered the car to leave the checkpoint.
 - E. Before leaving, the Plaintiff and her relatives begged the Defendants to allow them to cross the checkpoint and go to the hospital, which was about a ten-minute trip from there. All to no avail. The Defendants refused to allow them to cross the checkpoint, and the Plaintiff and her family were left no choice but to proceed along a route that bypasses the checkpoint.

F. When they reached Dura and with the car moving, the Plaintiff began to give birth. Her brother-in-law stopped the car. With the help of her mother-in-law, the Plaintiff gave birth to a daughter.

Lacking medicines to alleviate the pain, bandages, disinfectant, warm water, and other things to stop the Plaintiff's severe bleeding, her mother-in-law used pieces of cloth that she had torn from the Plaintiff's clothes and her clothes.

G. The baby was born alive and the family continued on its way to the hospital. They reached 'Alia Hospital about thirty minutes later.

During the trip, the condition of the newborn deteriorated, her crying weakened, and her movements indicated distress.

All this time, the Plaintiff was only partially conscious.

H. Some time after arriving at the hospital, the family was informed that the infant had died. The baby was buried the following day in the Beit Ula cemetery.

4. On 28 August 1998, the Plaintiff filed a complaint with the Israel Police regarding the incident. The statements of the Plaintiff, her brother-in-law and her mother-in-law were taken the same day.

5. The matter was investigated by the Investigating Military Police, and on 8 February 1999, the advocate for the Central Command informed Plaintiff's counsel that he had ordered the investigation file to be closed and that no measures would be taken against any of the soldiers involved. In his letter, Lt. Col. Yinnon stated that, "The soldiers exercised their discretion in the framework of the authority given them and made the decision after they got the impression that the complainants' contention was not sincere. It cannot be held that these soldiers acted with the intent to harm the complainants or out of disregard or indifference toward their distress."

Attached hereto is a copy of the response of the Central Command's advocate, marked A, which constitutes an integral part of this Statement of Claim.

6. **The right to receive medical treatment and breach of a statutory duty**

Every person has the right to receive emergency medical treatment, which includes the right to a woman to receive medical treatment at the time she is giving birth. This general right is enshrined in Israeli law and in international law. The provisions of law set forth

below require the Defendant and its agents to enable a woman in labor to have access to hospital unconditionally and without delay:

- A. Articles 2, 4, and 11 of the Basic Law: Human Dignity and Liberty, which require every government authority, including the IDF and its soldiers, to protect the life, body, and dignity of a person, and to refrain from violating these fundamental rights. This obligation creates the duty to allow emergency medical treatment in situations that threaten the life or body of a person, a duty that is now also set forth in Sections 3(b) and 11 of the Patients Rights Law, 5756 – 1996.
 - B. Article 46 of the Regulations Attached to the Hague Convention Regarding the Laws and Customs of War on Land (1907), which is part of international customary law that has been incorporated in Israeli law, requires the state to respect human life in territory under belligerent occupation.
 - C. Articles 16 and 21 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949), which was ratified by the State of Israel on 6 July 1951, requires states to provide special protection to expectant women, to enable the movement of maternity cases, and to protect and respect them. Article 50 of the Convention requires states not to hinder the provision of medical care to expectant women and to children.
 - D. Article 12 of the Convention on the Elimination of All Forms of Discrimination Against Women (1979), which took effect as regards the State of Israel on 3 November 1991, requires states to ensure that women have access to suitable health care services when giving birth, as well as during pregnancy and after giving birth.
7. A. Preventing the movement of the Plaintiff to hospital in Hebron, despite her grave medical condition, flagrantly violated her right not to be denied access to medical care and to health care services when giving birth.
- B. The Plaintiff will argue that, in preventing her from being taken to hospital, the Defendants breached their statutory duties, set forth in Section 6 above, which are intended to protect expectant mothers and infants at the time of their birth, and that the breach thereof caused injury to the Plaintiff, to the infant, and brought about her death.

8. Defendant 4 is directly responsible for the negligence reflected in its failure to act, as follows:

A. Following HCJ 3109/96, procedures were issued for the handling of residents of Judea and Samaria who arrive at checkpoints during closure and are in a medical emergency (hereinafter: the binding procedures).

As far back as December 1997, the Defendant undertook that these procedures, which were approved by all the competent officials, would be disseminated to soldiers at checkpoints. In retrospect, we see that the binding procedures were not disseminated to soldiers at checkpoints and, in practice, they were given other orders, which were not identical to the binding procedures. For example, the orders did not include the directive whereby, in every case of doubt, the soldiers at checkpoints were to be lenient and the directive whereby the checkpoint commander was to consult, where time existed to do so, with a member of the medical staff.

Defendant 4 was negligent in disseminating the binding procedures, even though it knew, or should have known, that they guarantee the provision of necessary medical treatment during childbirth, and that the lack of such treatment was likely to cause irreversible injury to the mother and her newborn child.

B. Did not properly instruct the soldiers stationed at checkpoints on how to act in emergency cases, such as childbirth, even though it knew, or should have known, that its failure to give clear instructions would likely cause irreversible injury to the mother and her newborn child.

C. Did not reasonably supervise the conduct of the soldiers stationed at the checkpoints during times of internal closure.

D. Did not meet its obligations and objectives in accordance with international law, as set forth in Section 7 above, to ensure the health of residents in the region, including the Plaintiff and her infant child.

E. Disseminated a number of procedures relating to movement in medical-emergency cases, even though it knew, or should have known, that the lack of clarity in this matter would likely lead to injury to life and body.

9. In addition, Defendant 4 is responsible in agency for the negligence of Defendants 1-3 and to their breach of statutory duties, all as set forth in Section 6 and 10 herein, in that they are the agents of and/or were acting on its behalf.
10. The Plaintiff will argue that the injury that she suffered resulted from the negligence of Defendants 1-3, as reflected in their acts and/or omissions, as follows:
 - A. They did not allow the Plaintiff, despite her medical condition, to reach a hospital in Hebron.
 - B. They ignored the entreaties of the Plaintiff and her family that they allow them to cross and go to the hospital in Hebron, even though they knew, or should have known, that the Plaintiff was in a medical emergency that justified allowing them to cross.
 - C. They relied solely on a superficial and rapid examination in determining that the Plaintiff was masquerading as a pregnant woman, even though they knew, or should have known, that she was in labor, which was a medical emergency justifying allowing them to cross.
 - D. Did not fulfill their obligation to ensure the safety and health of the local population.

The Plaintiff's damages

11. Preventing access to medical treatment denied the deceased infant and the bereaved mother the reasonable likelihood that experienced obstetricians, with medical equipment at the hospital, would treat them and relieve them from the severe pain and suffering during labor and childbirth.
12. Preventing access to medical treatment violated the dignity of the Plaintiff as a person entitled to medical treatment.
13. The Plaintiff will argue that the Defendants must compensate her as follows:

The Plaintiff's damages

- A. Medical expenses incurred NIS 3,000
- B. Non-monetary damages

14. The Honorable Court is requested to exercise its authority pursuant to Section 127 of the Rules of Civil Procedure and exempt the Plaintiff from attaching a medical opinion relating to her matter, in that she does not claim permanent physical or psychological disability as a result of the incident.
15. All the contentions set forth in this complaint are made in the alternative or are complementary, depending on the context.
16. The Honorable Court has the local and subject-matter jurisdiction to hear the claim herein.
17. Therefore, the Honorable Court is requested to summon the Defendants to court and to order them, jointly and severally, fully to compensate the Plaintiff for the damages she suffered, together with linkage differentials and interest from the day of the filing of the claim until the day of payment, together with court costs.

Jerusalem, today, 27 October 2003

_____ *[signed]* _____

Leena Abu-Mukh Zuabi, Attorney
Counsel for the Plaintiff