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The Magistrates Court in Jerusalem
CApp.. 3298/97
Ward v. Milchman
Opening date: 17 February 1997

Proceeding: Ordinary

At the Magistrates Court in Jerusalem

In the matter of: _____ **Ward**

Represented by counsel Adv. Hala Huri and/or
Eliahu Abram and/or Hisham Shabaita
of the Center for the Defence of the Individual
founded by Dr. Lotte Saltzberger
4 Abu Obeidah St., Jerusalem
Tel. 02-6283555, Fax 02-6276317

The Plaintiff

v.

1. _____ **Milchman**
2. _____ **Schleifer**
3. **The State of Israel**

By the Office of the Jerusalem District Attorney
4 Uzi Hasson St., Jerusalem

The Defendants

Nature of the claim: **Bodily Injuries**

Amount of the claim: **NIS 745,000**

Complaint

1. The Plaintiff was born in 1972 and is a resident of the old 'Askar Refugee Camp in the District of Nablus.

2. The First Defendant was born in 1972. At all times relevant to this Complaint, the First Defendant served as a policeman in the Border Guard.
3. The Second Defendant was born in 1972. At all times relevant to this Complaint, the Second Defendant served as a policeman in the Border Guard.
4. The Third Defendant was, at all times relevant to this Complaint, responsible for the actions of Border Guard policemen in the area of Nablus.

The Incident

5. At around noon on 18 July 1992, the Plaintiff was with his friend Suliman Razaz in the watermelon shack in the area known as “Al-musran al-Sha'biyya” at the entrance to the Old Ascar refugee camp in the District of Nablus.
6. While the Plaintiff was busy selling watermelons, a Border Guard Jeep arrived at the place. Approximately 4-5 Border Guard policemen got off the Jeep, including the First and Second Defendants.
7. The Border Guard policemen asked the Plaintiff, his friend and another person who was about to buy watermelons, to approach them and to present their identity cards.
8. After reviewing the identity cards, the Border Guard policemen ordered the Plaintiff’s friend to get into the Jeep. The Second Defendant then approached the Plaintiff, had him stand near the Jeep and ordered him to put his hands up and to spread his legs.
9. When the Plaintiff was unable to spread his legs wide – as he was wearing a long Galabia at the time – the Second Defendant forced him to do so by kicking his legs, thus causing the Plaintiff’s robe to tear.
10. The Second Defendant searched the Plaintiff’s body, removed all of the documents from his wallet and reviewed them. When the Plaintiff dared to ask that the Second Defendant not tear the medical certificate that was in his wallet, and which served the Plaintiff as a referral to surgery, the Second Defendant kicked the Plaintiff in the testicles and all over his body.
11. The Plaintiff fell down to the ground from the intensity of the pain, but that was not enough for the Second Defendant. He kicked the Plaintiff in the head and beat him

vigorously with the butt of his rifle. Some of the other Border Guard policemen who were on the scene joined the Second Defendant in kicking the Plaintiff.

12. The Plaintiff was beaten up in the head and in other body parts until he fainted and lost his consciousness. He was forcibly dragged to the Jeep and intermittently lost consciousness again.
13. While the Second Defendant was beating the Plaintiff up, the First Defendant, who was the commander of the Border Guard squad that arrived in the Jeep, watched the scene and did nothing to stop the physical abuse of the Plaintiff.
14. Inside the Jeep, the Second Defendant continued beating the Plaintiff up vigorously all over his body and kicking his head, while the Plaintiff was lying on the floor of the Jeep, and even stood on him.
15. The Plaintiff screamed from the pain he felt in his head and all over his body and started bleeding from the mouth.
16. The Plaintiff was taken to the Civil Administration in Nablus, where he complained to the Civil Administration officer of his physical abuse. The Plaintiff was arrested for a period of one month and then released to his home.
17. While in custody, the Plaintiff suffered severe headaches every single day.
18. During the last two weeks of his detention, the Plaintiff was held in the Megiddo Prison, where he first experienced an attack characterized by the feeling that his hands and legs had “seized up”. He fell down and lost his consciousness for several minutes, trembling all over and foaming a little at the mouth.
19. Since the Plaintiff was released to his home, he started suffering from similar and recurring attacks, at a frequency ranging between once a fortnight and once every two months. The character of the attacks continued as it was.
20. The attacks were brought on when the Plaintiff would see men in uniform (even Palestinians) and when he became very excited. He would suffer paresthesia in his limbs and shortly thereafter lose control of himself. Usually, a doctor would arrive immediately and give him an injection, after which the Plaintiff would calm down within several hours.

21. Due to these attacks, the Plaintiff was referred to medical examinations. It was the doctors' impression that the Plaintiff was suffering from epilepsy, and he was treated accordingly.
22. The Plaintiff emphasizes that he did nothing to justify the Second Defendant's attack on him.
23. Following the filing of a complaint with the Department for Investigation of Police Misconduct, the Second Defendant was brought to trial before a disciplinary court on the charge of unlawful use of force pursuant to Section 19(a) of the Second Schedule to the Police Ordinance. He was convicted and penalized by a severe reprimand on 20 February 1994.

The First and Second Defendants' Liability

Assault and Battery

24.
 - a. The Plaintiff shall claim that the beating he received by the kicking and with the rifle butt to all parts of his body and head by the Second Defendant, constitutes Battery, within the meaning of this term in Section 23 of Pequddat Ha-Nezikin (Nosah Hadash) [Torts Ordinance (New Version)], and that the Second Defendant is directly liable for the Plaintiff's beating without his consent.
 - b. The Plaintiff shall further claim that the Second Defendant assaulted him when attempting and/or threatening, by an act and/or movement, to use force as aforesaid against his body, and all while causing the Plaintiff to believe that he did indeed have, at that time, the intention and the ability to carry out his malevolent intentions.
 - c. The Plaintiff shall further claim that the First Defendant, who was the Second Defendant's commander, by his mere presence at the scene, his acquiescence in, and failure to intervene in order to stop the physical abuse of the Plaintiff, encouraged the Second Defendant, helped him and allowed the battery against the Plaintiff's body to take place. The First Defendant is therefore directly liable for the tort of battery committed by the Second Defendant pursuant to Section 12 of the Ordinance.

Negligence

25. The Plaintiff shall claim that the First and Second Defendants' act of battery constitutes, in itself, the civil wrong of negligence.
26. Alternatively, the Plaintiff shall claim that the First and Second Defendants were negligent, and that the Defendants' negligence was expressed in the following acts and/or omissions, namely that they:
 - a. Exceeded their authority and acted contrary to the instructions of the Border Guard Command and/or the orders and/or directives of the Inspector General of Police and/or the IDF orders and/or
 - b. Behaved recklessly and/or contemptuously and/or apathetically towards the integrity of the Plaintiff's body and/or
 - c. Failed to do everything within the power of reasonable Border Guard personnel to prevent the occurrence of the damage and/or
 - d. Used wrongful means to maintain public order and/or
 - e. Abused their authority by taking the law into their own hands and using force against the Plaintiff without any lawful justification and/or reasonable cause.
 - f. The First Defendant failed to supervise and/or properly supervise the acts and derelictions of the Second Defendant.
 - g. The First Defendant failed to ensure that the Second Defendant, who was subject to his command, respected the law.
 - h. The First Defendant failed to intervene in order to cease immediately the Second Defendant's irregular and illegal conduct, and took no action to stop the abuse of the Plaintiff's body.

Negligence Per Se

27. a. Alternatively to the alternative, the Plaintiff shall claim that the First and Second Defendants were negligent per se by violating statutory duties which are designed, according to the rightful meaning thereof, to protect the type of

persons to which the Plaintiff belongs, and that the battery and its resultant damage were caused due to the breach of such duties.

- b. The Plaintiff shall claim that, *inter alia*, the First and Second Defendants violated the duties set forth in Hoq Ha-Onashin [Penal Law], 5737-1977) (hereinafter: the “Law”), in Hoq Yesod: Kevod Ha-Adam we-Heruto [Basic Law: Human Dignity and Liberty], 5752-1992 (hereinafter: the “Basic Law”) and in Pequddat Ha-Mishtara (Nosah Hadash) [Police Ordinance (New Version)], 5731-1971 (hereinafter: the “Ordinance”).
28. For the sake of further specification, and without derogating from the generality of the aforesaid, the Plaintiff shall claim that the First and Second Defendants violated the following duties:
- a. Section 280(1) of the Law, which provides that a civil servant who, while abusing his authority, performs or orders the performance of an arbitrary act which infringes the right of another, is liable for three years imprisonment and/or
 - b. Sections 378, 379, 380 and 382 of the Law, which concern simple battery, battery causing grievous bodily injury and aggravated battery and/or
 - c. Section 2 of the Basic Law which provides that “there shall be no violation of the life, body or dignity of any person as such”.
 - d. Section 3 of the Ordinance regarding the duties of a policeman in maintaining public order and personal safety.

The Third Defendant’s Liability

29. The Third Defendant is liable for the battery committed by the First and Second Defendants, in their capacity as its agents and/or as having acted on its behalf.
30. The Third Defendant is liable for the damage caused to the Plaintiff 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 employees and/or others acting on its behalf, as expressed, *inter alia*, in the following acts and/or omissions, namely that it:

- a. Failed to fulfill its lawful duty and/or mission to ensure the safety of the residents of the West Bank (hereinafter: the "Region"), including the Plaintiff.
 - b. Failed to supervise and/or properly to supervise the acts and omissions of Border Guard policemen in the Region in general and/or in Nablus and/or at the scene of the incident described herein in particular.
 - c. Failed to instruct and/or direct the Border Guard policemen not to abuse their authority and not to commit an arbitrary act violating the right of others, including the Plaintiff.
 - d. Failed to instruct the Board Guard policemen and/or make clear to them their duty of maintaining public order and human safety.
 - e. Failed to make clear to the Border Guard policemen the instructions of the Border Guard Headquarters and/or the orders and/or directives of the Inspector General of Police and/or the directives of the IDF.
 - f. Dispatched an unskilled force and/or a force lacking the appropriate commanding functionary in a Border Guard police patrol car.
 - g. Failed to observe and/or teach and/or supervise the observance of the instructions of the Border Guard Headquarters and/or the orders and/or directives of the Inspector General of Police and/or the directives of the IDF and/or improperly supervised and taught the said orders and/or gave no and/or insufficient safety instructions and/or failed to ensure that persons dedicated to the instruction thereof, and particularly the Border Guard policemen who assaulted the Plaintiff, were familiar with or observed the same.
 - h. 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 battery 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.
31. The Third Defendant also bears vicarious liability for the dereliction of duty of the First Defendant, who was the Second Defendant's commander, whose duty it was to supervise the conduct of the Second Defendant, to ensure that the law was respected

and promptly to stop any irregular behavior. Despite these duties, the First Defendant did not intervene in the acts of the Second Defendant and even encouraged him.

The Plaintiff's Damage

32. Ever since the Plaintiff's acute, sudden and entirely unwarranted battery, the course of his life has changed entirely, and he is no longer the man that he was.
33. Since the incident, the Plaintiff has been complaining of severe difficulties falling asleep and of frequent awakenings. Even today, four and a half years after the incident, he is still jolted awake by nightmares.
34. At times, the Plaintiff has nightmares in which people are attacking him and want to kill him, and he sometimes talks and cries out in his sleep. For this reason, the Plaintiff has moved to sleep in a tin hut near the house, and not with the rest of the family as he had done before the incident.
35. Nowadays, the Plaintiff smokes 3 times more than he used to. He is sad, reclusive, is cutting off his ties with other people, and is unable to enjoy anything. He cries a lot, also spontaneously, and complains of severe forgetfulness and difficulty in concentrating.
36. The Plaintiff suffers from many headaches, excessive irritability and uncontrollable temper tantrums, directed especially at his family or at himself. Very often, he has beaten himself, cut himself, banged his head against the wall and once even broke his nose and was brought to hospital.
37. Before the incident, the Plaintiff used to sell watermelons in the summer, and help his father with paving jobs in the winter. On average, he earned NIS 2,500 per month from these two jobs.
38. Since the incident and until 18 months ago, the Plaintiff did not work at all. Throughout this period of time, he suffered continuous restlessness and was under medical monitoring until one year ago. For the past 8 months, he has been taking no medication (Luminel and Zanex) at all, medications which did not improve his condition.
39. Approximately one and a half years ago, the Plaintiff started a job selling vegetables in the Nablus market. He earns NIS 40-50 per day. However, the Plaintiff finds

himself snapping also at shoppers at the stall, and is therefore able to work only two days a week.

40. A specification of the Plaintiff's psychiatric disability is provided in the opinion of Dr. Avi Rafas of 22 January 1997 (which is attached to this Complaint as Exhibit A and constitutes an integral part hereof), according to which the Plaintiff was determined to have a permanent disability at the rate of 50%.
41. According to the opinion of Dr. Rafas, the Plaintiff suffers from post-traumatic depression, and requires anti-depression medication, as well as psychiatric treatment.
42. Following is a specification of the damage caused to the Plaintiff due to the incident:

Specific damage

- | | | |
|----|-----------------------|-------------------|
| a. | Past lost earnings | NIS 135,000 |
| b. | Past medical expenses | <u>NIS 10,000</u> |

Total specific damage	NIS 145,000
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General damage

- | | | |
|----|--------------------------|-------------------|
| a. | Pain and suffering | NIS 200,000 |
| b. | Loss of earning capacity | NIS 350,000 |
| c. | Future medical expenses | <u>NIS 50,000</u> |

Total general damage	NIS 600,000
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Total specific and general damage: NIS 745,000

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

The Honorable Court is therefore moved to summon the Defendants and to charge them with payment to the Plaintiff of his damage as specified in the Complaint, in addition to lawful indexation differences and interest from the date of filing of the Complaint until the date of actual payment, in addition to trial expenses.

Jerusalem, 17 February 1997.

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Hala Huri, Adv.
Counsel for the Plaintiff

(T.S. 9812, M.M. 17935)