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The Magistrates Court in Jerusalem
Civ. 8750/97
Amarneh v. The State of Israel
Opening date: 15 June 1997

Procedure: Ordinary

At the Magistrates Court in Jerusalem

In the matter of:

Amarneh

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 Department)
1 Henrietta Szold Street, Tel Aviv 64921
Tel: 03-6970282; Fax 03-6918541

The Defendant

Nature of the claim: **Bodily Injury**

Amount of the claim: **NIS 244,597**

Complaint

1. The Plaintiff was born in 1972 and is a resident of the village Yabed in the District of Jenin.
2. The Defendant, the State of Israel, was at all times relevant to this Complaint in charge of the actions of IDF soldiers in the area of the village Yabed in the District of Jenin.

3. In the early evening hours of 4 September 1990, while the Plaintiff was walking with his friend in the center of Yabed, the Plaintiff noticed a military Jeep riding behind them.
4. The Plaintiff also noticed a group of six soldiers coming towards them.
5. The Plaintiff, preferring not to come face to face with the group of soldiers, decided to turn away from the road on which he was walking, and turned left.
6. Before the Plaintiff had time to change the direction in which he was walking, and immediately after he passed the soldiers, the Plaintiff was shot in the head by a rubber bullet, without any justification. Consequently, the Plaintiff hit a nearby fence, fell down and lost his consciousness (hereinafter: the incident).
7. When the Plaintiff came to, he found himself in the Civil Administration building in Yabed, where he was being treated by a military doctor or paramedic.
8. From the Civil Administration building in Yabed, the Plaintiff was transferred by an ambulance belonging to the Governmental Hospital in Jenin to Al-Itihad hospital in Nablus.
9. Due to vomiting and a suspected fracture to the skull, the Plaintiff was transferred from Al-Itihad hospital in Nablus to Hadassah Ein Kerem hospital in Jerusalem.
10. The Plaintiff emphasizes that he did nothing, nor took part in any action of any kind, which could have presented grounds for firing at him.
11. Despite the IDF's knowledge of the incident, no investigation was performed by any military entity into the injury caused to the Plaintiff.
12. It should be noted that after being released from Hadassah Ein Kerem hospital in Jerusalem, the Plaintiff was not summoned for questioning at the Police or the Civil Administration, and he was neither arrested nor indicted with any charge.

The Soldiers' Liability

13. 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. Fired rubber bullets in circumstances that did not justify such use.

- b. Fired rubber bullets indiscriminately 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 rubber bullets negligently and/or in violation of the regulations on the use of rubber bullets.
 - e. Opened fire while facing no material danger and with no justification or cause to open fire.
 - f. Fired without permission 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 a reasonable soldier to prevent the shooting incident.
 - i. Failed to act as would have a reasonable soldier under the circumstances.
14. 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

15. 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.
16. The Defendant is liable for the accident 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 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/s.
 - 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/s 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 accident 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/s to shoot unlawfully.
 - k. Acted negligently by allowing the soldier/s to use rubber bullets unlawfully.
17. 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 or 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.

18. 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/s, the Defendant's agents, and the "dangerous instrumentality" rule applies.
19. The Plaintiff does not know the identity and/or names of the soldiers and/or defense forces personnel who caused the damage, and the Defendant is charged with disclosing the same together with all the documents, investigations 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 defense forces from the day of the incident.

The Plaintiff's Damage

20. The Plaintiff was hospitalized at Hadassah Ein Kerem hospital for five days. At the time of his admission, an injury was found to the occipital part of the head with a compressed fracture visible by CT. Injury marks were also visible on his lower lip and three of his teeth were broken. He underwent surgery to lift the compressed bone and to remove the crushed parts thereof.
21. After the Plaintiff's release from Hadassah Ein Kerem hospital, he remained bedridden at home for a week, and suffered from insomnia for two months and from impaired peripheral vision.
22. As a result of the incident and the injury, the Plaintiff suffers chronic headaches, which are aggravated by exposure to the sun. When he has a strong headache, he faints. He is greatly bothered by the absence of bone in the occipital part of his head. He suffers from forgetfulness, has difficulties concentrating and is thus prevented from undertaking university studies, as he planned to do.
23. In 1990 the Plaintiff registered for studies at the university in Jenin, but did not succeed in even one exam, due to his inability to concentrate and to remember the studied material. This is in spite of the fact that the Plaintiff was one of the top students in his class at school.
24. A specification of the Plaintiff's neurological disability is given in Prof. Z. Argov's opinion of 1 January 1997 (which is attached to this Complaint as Exhibit A and

constitutes an integral part hereof), based on which the Plaintiff was determined to have a 10% permanent disability due to the absence of bone in the skull on an area of 5 cm², and a 5% permanent disability due to minor post-traumatic injury.

25. Following is a specification of the damage suffered by the Plaintiff due to the incident:

General Damage

a.	Pain and suffering	NIS 55,800
b.	Loss of earnings capacity	<u>NIS 188,797</u>
	<u>Total general damage</u>	NIS 244,597

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

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 in Section 25 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.

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Hala Huri, Adv.
Counsel for the Plaintiff

Encl. Medical opinion of Prof. Z. Argov

Jerusalem, 15 June 1997

(T.S. 9630, M.M. 18690)