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The Magistrates Court in Jerusalem
Civ. 22850/97
Abu Issa v. Levy
Opening date: 3 December 1997

Procedure: Ordinary

At the Magistrates Court in Jerusalem

In the matter of:

1. The Estate of the late Abu Issa, by the heirs:

- a.
- b.
- c.
- d.

2. Abu Issa

3. Abu Issa

4. Abu Issa

5. Abu Issa

all 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 Plaintiffs

v.

1. Lieutenant Levy

2. The State of Israel

both represented by the Tel Aviv District Attorney's Office
(Civil Department)
1 Henrietta Szold Street, Tel Aviv 64924
Tel. 03-6970222; Fax 03-6918541

The Defendants

Nature of the claim: **Tortious**

Amount of the claim: **NIS 255,000**

Complaint

1. The First Plaintiff is the Estate of the late Abu Issa (hereinafter: the Deceased), who was born on 19 July 1972, was a resident of the Ras El Ein neighborhood in Nablus and was killed on 8 December 1995 by the rifle of the IDF soldier Lieutenant Levy, the First Defendant.

The Inheritance Order is attached to this Complaint as Exhibit A and constitutes an integral part hereof.

2. The Second Plaintiff is the Deceased's father, who was born in 1937 and is a resident of the Nablus neighborhood Ras El Ein.
3. The Third Plaintiff is the Deceased's mother, the Second Plaintiff's wife, who was born in 1941 and is a resident of the Nablus neighborhood Ras El Ein.
4. The Fourth Plaintiff is the Deceased's brother, who was born in 1967 and is a resident of the Nablus neighborhood Ras El Ein.
5. The Fifth Plaintiff is the Deceased's brother, who was born in 1968 and is a resident of the Nablus neighborhood Ras El Ein.
6. Defendant 1 is the soldier who shot the Deceased and caused his death. His details and address are known to Defendant 2, but were censored and not divulged to the Plaintiffs. The Plaintiffs therefore move to deliver the Complaint to him via Defendant 2's counsel.
7. Defendant 2, the State of Israel, was at all times relevant to the Complaint in charge of the actions of IDF soldiers in the city of Nablus.

The Incident

8. On 8 December 1995, at around 15:30, the Deceased was on his way home with his friends after the Friday prayers.
9. When they approached the alley leading to Ha-Nevi'im Street, close to the building now used as the Office of Social Services in Nablus, a military Jeep arrived at the junction at the entrance to the alley.
10. Defendant 1 immediately fired several shots towards them not through his rifle sight, while still in the Jeep and while descending the Jeep, without the soldiers facing any danger and without any wrongful behavior on the part of the Deceased and his friends.
11. The Deceased's friends ran away from the shooting, but the Deceased was shot in the head before he managed to get away, and collapsed on the spot.

12. Defendant 1, together with another soldier, went over to the Deceased, noticed the gunshot wound to his head and left the place immediately, without giving the Deceased any assistance and without calling for medical help.
13. The Deceased's friends returned to the scene of the shooting and found the Deceased lying on the ground, bleeding from the head, the nose and the mouth, but still showing vital signs.

They took him to Al-Ittihad Hospital in Nablus, where his death was pronounced. A medical certificate from Al-Ittihad Hospital and the Deceased's Death Certificate are attached to this Complaint as Exhibits B and C and constitute an integral part hereof.

14. On 11 August 1996, the Third Plaintiff filed a complaint with the Military Advocate of the Central Command of the IDF via the Center for the Defence of the Individual, demanding that an investigation be opened into the circumstances of her son's killing, and to be updated of the results thereof upon its commencement.
15. The Military Police did indeed investigate the incident which caused the Deceased's death, and at the conclusion of the investigation, Defendant 1 was charged for failing to give the Deceased medical assistance.
16. The regimental directives for the operations of the IDF forces on the date of the incident toughened the open-fire regulations then in effect, and reduced the scope of the situations in which opening fire was permissible.

These directives were brought to the attention of Defendant 1.

Liability of Defendant 1

17. The Plaintiffs 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 Defendant 1 who committed the shooting that caused the death, as expressed in the following acts and/or omissions, namely that he:
 - a. Used live fire in circumstances that did not justify such use.
 - b. Fired not through his rifle sight.
 - c. Fired from a range endangering human life.
 - d. Fired in violation of the open-fire regulations.
 - e. Fired without early warning.
 - f. Fired towards the Deceased's head in a manner endangering his life.

- g. Opened fire while neither he nor others faced any material danger and with no justification or cause for opening fire.
- h. 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 Deceased's type.
- i. Acted against the regimental directives for the operations of IDF forces in Nablus that prevailed at the time of the incident.
- j. Failed to give any assistance to the Deceased after his injury.
- k. Failed to do everything within the power and ability of a reasonable soldier to prevent the shooting incident.
- l. Failed to act as would have a reasonable soldier under the circumstances.

Liability of Defendant 2

- 18. Defendant 2 is liable for the negligence of Defendant 1 who committed the shooting, in his capacity as its agent and/or as having acted on its behalf.
- 19. Defendant 1 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 ensure that the open-fire regulations were observed by the soldiers under its command.
 - b. Acted insufficiently and failed to instruct or train the soldiers in whose hands it deposited lethal weapons, regarding the open-fire regulations and/or the compliance with such regulations.
 - c. Deposited lethal weapons in the hands of trigger-happy soldiers and/or failed to properly instruct them of the duty of caution in the use of the weapon entrusted to them.
 - d. 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.

- e. Failed to fulfill its lawful duties and/or missions to ensure the safety of the residents of the region, including the Deceased.
 - f. 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.
 - 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 incident.
 - 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.
20. Alternatively, the Plaintiffs shall claim that they neither know, nor can know the real circumstances that caused the incident, but since the weapon with which the Deceased was shot was under the control of Defendant 1 who was the agent of Defendant 2, the circumstances of the case are more consistent with the negligence of Defendant 2 than with its non-negligence. The circumstances of the case are subject to the rule of *Res ipsa loquitur*, and it is Defendant 2 which has to prove that the accident occurred through no negligence on its part.
21. Alternatively, the Plaintiffs shall claim that Defendant 2 is required to prove that the incident occurred through no negligence on its part, because the incident was caused by a “dangerous instrumentality” owned and/or controlled by Defendant 1, the agent of Defendant 2, and the “dangerous instrumentality” rule applies.
22. The Plaintiffs shall claim that the acts and/or derelictions of Defendant 1 and of Defendant 2 caused the Deceased's death, thus causing them irreversible damage, as expressed in the following damage:
- a. The Deceased was 23 when the shooting caused his premature death.

- b. The Second and Third Plaintiffs are the Deceased's parents, who were supposed to rely on their son for future financial and moral support. In his death, they were denied this option.
23. The estate's damages are due to the Plaintiffs 2-5, in their capacity as the Deceased's sole heirs, as follows:
- | | | |
|----|--|--------------------|
| a. | Burial and mourning expenses | NIS 5,000 |
| b. | Shortening of the Deceased's lifespan
and the Deceased's pain and suffering | <u>NIS 100,000</u> |
| | Total damage of the Estate | <u>NIS 105,000</u> |
24. The damage of the Plaintiffs 2-5 is as follows:
- | | | |
|----|--------------------|--------------------|
| a. | Pain and suffering | NIS 150,000 |
| b. | Total damages | <u>NIS 255,000</u> |
25. The Honorable Court has the territorial and the subject matter jurisdiction to hear the Complaint. The Honorable Court is therefore moved to summon the Defendants and to charge them with payment to the Plaintiffs of their damage in full, as specified in Sections 23 and 24 above, and to charge the Defendants 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.

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Hala Huri, Adv.

Counsel for the Plaintiffs

Jerusalem, 3 December 1997

Exhibits: Inheritance Order
 Medical Certificate from Al-Ittihad Hospital
 Death Certificate

(T.S. 10228, M.M. 19740)