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At the Jerusalem Magistrate Court

Jerusalem Magistrate Court

A 3906/96

Abu Laban v. Yitzhari

Filing date: February 11,
1996

In the matter of:

1. The Estate of the deceased _____ Abu Laban
ID No. _____

2. _____ Abu Laban
ID No. _____

3. _____ Abu Laban
ID No. _____

All from Ad Duheisha Camp, Bethlehem District
Represented by counsel, Adv. Badra G. Huri and/or Hala Huri of HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Plaintiffs

v.

1. Dror Yitzhari, by Israel Defence Forces
Represented by the Tel Aviv District Attorney's Office
1 Henrietta Szold Street, Tel Aviv

2. Israel Defence Forces

3. Minister of Defence, Mr. Shimon Peres

Defendants 2 and 3 are represented by the Tel Aviv District Attorney's Office (Civil)
1 Henrietta Szold Street
Tel Aviv

The Defendants

Nature of Claim: Tortuous
Amount of Claim: 106,500 ILS

Statement of Claim

The plaintiffs hereby advise the honorable court and state that all claims specified herein are independent of each other and/or are made in the cumulative and/or in the alternative, all in accordance with the relevant circumstances and context. The plaintiffs will further claim that all exhibits attached to this statement of claim constitute an integral part thereof.

1. Plaintiff No. 1 is the estate of the deceased, the late _____ Abu Laban (hereinafter: the **deceased**) who was killed on April 17, 1989 from fire opened by IDF soldiers.
2. Plaintiffs 2 and 3 are the deceased's parents. Defendant No. 1 is the soldier who shot the deceased and caused her death. Defendant 2 has his details and address but they were censured and were not revealed to the plaintiffs. Hence, the plaintiffs wish to serve the court documents on him via defendant No. 2.
3. Defendant No. 2 is the military of the state of Israel which is subordinate to the government and which consists of the ground forces, the navy and the air force.

The minister responsible for its operations on behalf of the government is the Minister of Defence, Defendant No. 3.

4. The plaintiffs will argue that on April 17, 1989 (the day of the incident) around 10:00 am the deceased, who was at that time 13 years old, left her house located in Ad Duheisha camp, Bethlehem district, to look for her younger brother who went outside.

On that day the funeral of an intifada victim who had been killed a day earlier from a shooting carried out by IDF soldiers, was taking place in the camp. The deceased went with her friend to "Jabal al Ikhras", the close-by mountain, to bring her brother back home.

5. When the deceased and her friend reached the mountain area, they have noticed some soldiers and a number of young men who had been gathering in the area. The deceased and her friend realized that there were apparently problems and riots in the area and intended to leave the place and return to their home in the camp.
6. The soldiers were about 30 meters away from the deceased and her friend. They started to shoot towards the two girls. They used live rounds. The deceased and her friend started to run. The deceased was running before her friend, until she was shot in her head and fell down. Her friend was shot and injured in her left hip. She was scarred and kept on running, leaving the deceased behind her.
7. As she was shot the deceased fell down near a stone fence. One of the young men who was in the area noticed her, picked her up and realized that she had been shot in the back of her head and that she was losing a lot of blood. He saw her face in a terrifying condition, with a hole in her forehead between her eyes, above her nose. He picked her up and started to run towards the camp. While running he was trying to bend down so that the soldiers would not notice him.

8. The young man reached the house of one of the inhabitants of the camp and put the deceased in the house. His clothes were covered with blood. He put her on a blanket in the house. A few people from the camp who were there thought that she had passed away but wanted a physician to pronounce her death and have therefore transferred her to the Bethlehem's Mount David Orthopedic Hospital.
9. In Mount David Hospital the deceased was examined by a physician who has pronounced her death. He has prepared a medical report in which he described the shot injury in her head. Attached is a copy of the medical record and its translation marked by the letter **A** and **A(1)**.
10. After _____'s death had been pronounced, she was buried in the cemetery of Artas, a village adjacent to the Ad Duheisha camp. Her parents and people from the village attended her funeral.

The funeral was recorded by the Canadian TV. The plaintiffs have in their possession a video cassette with a copy of the report which was broadcasted concerning the funeral.

11. A curfew was imposed on the Ad Duheisha camp but despite the curfew people came to the house of plaintiffs 2 and 3 to console the mourners.
12. On the date of the incident the military commander and his assistant arrived to the house of plaintiffs 2 and 3. They tried to convince plaintiff 2 to have an autopsy performed on the body of his daughter but he refused for religious reasons – after his daughter had been buried he was not willing to take her out of the grave to have her body autopsied. The commander and his assistant tried to convince the plaintiff that his daughter had been killed by the "Shabab", before an investigation concerning the circumstances of the incident was conducted by the competent authorities. The plaintiff was in shock and in a state of deep mourning and did not want to have any conversation whatsoever with them.
13. The plaintiffs were advised that the military also arrived to the house of the people that _____ was brought into after she had been shot by the soldiers. The soldiers were looking for her – they followed the blood stains but did not find her body since, as specified above, she has been transferred to a hospital in Bethlehem.
14. The plaintiffs will argue that the circumstances of the deceased's death from shots fired at her by an IDF soldier, who is an agent of the defendants, mandate the filing of a tortuous action by the plaintiffs against the defendants to receive compensation for the killing of the deceased. Therefore, the plaintiffs file this action against the defendants, requesting to compensate them for the damages suffered by them as a result of _____'s killing.
15.
 - A. Plaintiffs 2 and 3 requested, through HaMoked for the Defence of the Individual, to open an inquest to establish the facts of death, after their daughter had been killed.
 - B. The Military Police Investigations Unit (MIU), in its investigation of the circumstances of _____'s death, concluded that "the claim that the girl was killed by a plastic round which hit her in the head has not been substantiated by the investigation", and the military advocate for the central command has therefore instructed to close the file.
 - C. A parallel request to have the incident investigated was submitted by Knesset Member Yair Tsaban, who requested the Minister of Defence, on June 1, 1990, to have several death incidents investigated, including the incident being the subject matter of this action.
 - D. The response of the then presiding Minister of Defence, the late Mr. Itzhak Rabin, to MK Yair Tsaban, was that : "On April 17, 1989 a curfew was imposed on Ad Duheisha. During

an IDF patrol a riot was identified and the soldiers took action to have it dispersed, however, at a certain stage they ran out of rubber ammunition. The lives of the soldiers were at risk as a result of stone throwing... one of the commanders shot two plastic rounds and in so doing has deviated from the operational orders. It seems that one of these rounds hit the deceased and caused her death. Since more than three months have elapsed from the date the soldier was dismissed from service, disciplinary proceedings may not be initiated against him... but it should be emphasized that the advocate ordered to have a comment registered despite the life threatening circumstances that the force was facing." Attached is a copy of the response of the Minister of Defence marked by the letter **B**.

- E. The response of the Minister of Defence contradicts the response of the advocate. When she was requested to provide an explanation for said contradiction, the advocate sent a letter dated August 26, 1990, which denied the medical record (Exhibit A to this statement of claim) and which failed to explain the contradiction between the two responses that were provided concerning the circumstances of the deceased's death.

Attached are copies of the advocate's responses, marked by the letters **C** and **D**.

16. The investigation material was photocopied at the advocate's offices. A perusal of the investigation material reinforces plaintiffs' claim that _____'s death was caused by an unjustified and unlawful shooting, contrary to the Open Fire Regulations, and without any fault on her part.
17. The plaintiffs will argue that the contradicting versions provided by the authorities, point at an attempted cover-up of the investigation and an attempt to protect the soldiers and refrain from uncovering the truth.

The response provided by the Minister of Defence was apparently based on the correct version of the circumstances of the incident. The response provided by the Minister of Defence points at a connection between the above shooting and the girl's death.

Eventually, the Military Advocate General's Office decided to ignore the details specified in the response of the Minister of Defence. In addition it was decided to ignore the medical records concerning the deceased's death and it was further resolved that no substantiation was found to the claim that the death was caused by the shooting which was carried out by the soldiers. This odd conclusion does not explain why those who shot and killed _____, if indeed they were not soldiers, were not located, why the physician who prepared the medical record was not interrogated, and why the learned military advocate is satisfied with the testimonies of one side only, and makes no attempt to hear additional versions.

The lack of explanations to these questions, puts in doubt the investigation conducted by the MIU and the decision of the military advocate.

18. A. The plaintiffs will claim that the defendants must compensate them for their damages since by their conduct and by the shooting which caused the deceased's death they have breached a statutory duty. Hence, the plaintiffs will claim that the defendants breached the statutory duty: "IDF's Open Fire Regulations ", which is intended to be for the benefit and/or protection of persons, including, *inter alia*, the deceased. The breach caused the deceased damage of such kind or nature contemplated by the enactment.
- B. The plaintiffs will claim that a statutory duty was breached by shooting towards the deceased, although the lives of the soldiers were not at risk, since the Open Fire Regulation provides: "Fire should not be opened, other than against a specific assailant who was

identified as putting a person's life at risk. Strict attention should be paid not to injure others." The deceased did not pose any risk and did not take part in the riots. She was killed in cold blood without any fault on her part.

- C. The plaintiffs will claim that a statutory duty was breached by shooting towards the deceased's head contrary to the following provision:

"Shooting should not be aimed at the upper part of the suspect's body".

- D. The plaintiffs will claim that a statutory duty was breached by shooting towards a little girl contrary to the provision: "Shooting at women and children should be avoided to the extent possible."

- E. The plaintiffs will claim that a statutory duty was breached by shooting without warning and contrary to the stages of shooting for the purpose of detaining a suspect under life threatening circumstances.

- 19. The plaintiffs will claim that the deceased's death was caused as a result of the negligence of defendants' agents, and since they are defendants' agents, the defendants are vicariously liable to compensate the plaintiffs for their damages. In addition, defendants 2 and 3 are liable for direct negligent acts. The following are Defendants' negligent acts and omissions:

The liability of defendant No. 1 and the other soldiers for the damage inflicted upon the plaintiffs.

The plaintiffs will claim that the incident and its damages were caused as a result of the negligence and/or breach of the duty of care and/or recklessness and/or frivolousness and/or breach of statutory duties by defendant No. 1 and/or other soldiers who carried out the shooting that caused the deceased's death, which came into effect in each of the following acts and/or omissions:

- A. Opened fire from close range and/or from a range which poses a threat to human life and/or contrary to the Open Fire Regulations.
- B. Used firearms negligently and/or contrary to the Open Fire Regulations.
- C. Opened fire although they were not facing any real danger and there was no justification or cause to open fire.
- D. They aimed the shooting at the deceased's head rather than at her feet and failed to comply with the Open Fire Regulations which mandate a call to stop, shooting in the air and shooting towards the feet.
- E. Opened fire without having clarified and ascertained that innocent passers-by would not be injured there-from.
- F. Opened fire without having obtained permit from the soldier in charge.
- G. Acted contrary to the orders of the supreme command and/or contrary to the General Staff orders and/or contrary to operational and/or general orders of the IDF and/or contrary to the Open Fire Regulations and/or contrary to orders given to them under the law and/or contrary to statutory duties intended to safeguard the health and well-being of persons such as the plaintiff.

- H. Failed to take such measures that a reasonable soldier may and can take to prevent a shooting incident.
 - I. Failed to act in the manner in which a reasonable soldier would have acted under the circumstances.
20. If any of the acts or omissions which constitute the negligence that caused the accident were carried out by another person who acted on behalf of defendants No. 2 and 3 and/or at their service and/or as their agent, then the defendant is vicariously liable for the consequences of the accident and for making the payment for the damages which were inflicted upon the plaintiffs.
21. Defendants 2 and 3 are responsible for the negligence of defendant No. 1 and/or the soldiers who carried out the shooting, as their agents and/or by virtue of having acted on their behalf.
22. Defendants 2 and 3 are responsible for the accident and its damages as a result of the negligence and/or breach of the duty of care and/or breach of statutory duty imposed upon them and/or their agents and/or anyone on their behalf, which came into effect in each of the following acts and/or omissions:
- A. They failed to supervise and/or failed to properly supervise all acts and/or omissions of IDF soldiers in the territories in general and/or in the area and/or in the location of the accident in particular.
 - B. They failed to fulfill their duties and/or obligations under the law, including, *inter alia*, to provide for the safety of the residents of the area including the plaintiff.
 - C. They failed to foresee, although they should have foreseen, the accident and/or the chain of events which caused the accident and/or have foreseen the accident and/or the chain of events which caused the accident and nevertheless did nothing and/or did not do enough to prevent the accident and/or to prevent the damage and/or to reduce it.
 - D. Assigned for the handling of a disturbance, if any, an unskilled force and/or a force lacking appropriate commanding skills.
 - E. Failed to clarify to the soldier/s the Open Fire Regulations.
 - F. Failed to be strict and/or to clarify and/or to supervise the fulfillment of the Open Fire Regulations and/or improperly supervised and clarified the Open Fire Regulations and/or completely failed to convey and/or failed to appropriately convey safety rules and/or failed to ascertain that the persons guided by them, and especially the soldier/s who carried out the shooting, were familiar with them or would fulfill them.
 - G. Failed to do whatever they could and/or should have done and/or to do the right thing and/or whatever was required to prevent the accident and its damages and/or acted frivolously and without care and did not pay attention and/or did not supervise the persons under their responsibility.
 - H. Failed to act as a responsible, cautious and prudent person would have acted under the circumstances of the place, matter and incident to prevent the occurrence of the accident.
 - I. Acted contrary to the safety rules and breached a statutory duty.
 - J. Acted negligently by allowing the soldier/s who carried out the shooting to shoot unlawfully.

- K. Acted negligently by allowing the soldier/s who used ammunition to use it unlawfully.
23. Plaintiffs 2 and 3 will claim that as a result of the acts of the defendants and/or the acts of their agents severe damages and losses were caused to the deceased and to them as specified below:
- A. The deceased was 13 years old when she died. She was an outstanding student at school, active and talented, and she had a remarkable career ahead of her. As a result of her death these chances to lead a good life were severed.
 - B. Plaintiffs 2 and 3, the deceased's parents, were supposed to rely on their daughter in the future and expected to be financially and morally supported by her. This eventuality was severed by her death.
 - C. Great pain and suffering were caused to plaintiffs 2 and 3 as a result of the death of their daughter, who died so young.
24. The damages of the estate which are due to plaintiffs 2 and 3 as the sole heirs of the deceased are as follows:
- | | |
|--|------------|
| a. Burial and mourning costs | 1,500 ILS |
| b. Shortened lifespan of the deceased | 35,000 ILS |
| c. Pain, suffering and agony of the deceased from
the moment she was shot until her death | 20,000 ILS |
25. The damages of plaintiffs 2 and 3 are as follows:
- | | |
|----------------------|--------------------|
| Pain and suffering | <u>50,000 ILS</u> |
| <u>Total damages</u> | <u>106,500 ILS</u> |
26. The honorable court has the local and subject matter jurisdiction to adjudicate the claim.
27. In view of all of the above, the honorable court is hereby requested to summon the defendants and order them to pay the plaintiffs compensation for the killing of _____ Abu Laban which was caused by the failure to exercise a duty of care, by negligence and breach of statutory duty.

(signed)

Badra G. Huri, Advocate
Counsel to Plaintiff

Jerusalem, today February 2, 1996.

(File No. 632.2, 13565)