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Jerusalem Magistrate Court

In the matter of: 1. Estate of the deceased

ID No. _____

By the heirs:

A. _____ Taha

ID No. _____

B. _____ Taha

ID No. _____

C. _____ Taha

ID No. _____

D. _____ Taha

ID No. _____

E. _____ Taha

ID No. _____

All five from Haifa Road

Near Hamza Mosque

"Ein Beit el Ma" camp

Nablus District

F. _____ Taha

ID No. _____

24 Abu Obeida Street

Ras el Ein Quarter

Nablus

2. _____ Taha
ID No. _____

Haifa Road near Hamza Mosque
"Ein Beit el Ma" camp, Nablus District

All represented by counsel Adv. Eliahu Abram (Lic. No. 11851) and/or Hisham Shabaita (Lic. No. 17362) and/or Michal Pinchuk (Lic. No. 21600) of HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – R.A.
4 Abu Obeida St., Jerusalem
Tel: 02-6283555 Fax: 02-6276317

The Plaintiffs

v.

1. Uri Meir Vininger
ID No. 2517344-4
Kdumim 44856
2. The State of Israel
Represented by Tel Aviv District Attorney's Office
(Civil)
1 Henrietta Szold St., Tel Aviv 64924
Tel: 03-6970222 Fax: 03-6918541

The Defendants

Nature of Claim: Personal Injury

Statement of Claim

The Parties

1. Plaintiff 1 is the estate of the deceased _____ Taha (hereinafter: the "**deceased**"), borne on March 7, 1980, who was a resident of the "Ein Beit el Ma" Camp, Nablus District (hereinafter: the "**camp**"), and who was killed on January 25, 1995. The estate's heirs, specified in the caption of the claim, are the deceased's mother and five of his brothers and sisters.

The Inheritance order is attached to this statement of claim as an integral part thereof and marked Exhibit A.

2. Plaintiff 2 is the mother of the deceased, borne in 1943 and resident of the camp. Plaintiff 2 was widowed in 1992 and is a homemaker with no means of support. Her deceased son was expected to support her in the future and this claim is filed by her as a dependent.
3. Defendant 1, Uri Vininger (hereinafter: "**defendant 1**"), borne in 1973, served during the period relevant to this statement of claim in the Shomron Territorial Brigade, as a company sergeant major in the base.
4. Defendant 2, the State of Israel (hereinafter: "**defendant 2**"), was, at all times relevant to this statement of claim, responsible for and/or the operator of and/or in charge of the actions of the IDF soldiers and/or the Israel Border Policemen and/or the Israel Security Agency (ISA) forces and/or other security forces in the camp in which the incident described herein below has occurred.

The Incident

5. On January 25, 1995, defendant 1 was the commander in charge of an administrative ride, the purpose of which was to bring concrete blocks and planters from Shavei Shomron to the base in which he was stationed.
6. The ride which was under defendant 1's command was made in an armored military vehicle known as "Abir" (hereinafter: "**Abir**"). Three additional soldiers took part in the ride, together with defendant 1 and under his command: the first one – a driver; the second one – a general utility-person in the base, who has previously served as a cook; the third one – a cook in the base. The last two have not used their guns and have not undergone training at a shooting range in the months which preceded the incident.

Defendant 1, who is not an officer, has not been briefed before he went on the ride with his subordinates.

7. In the period which preceded this ride, the Nablus area was calm, with no exceptional confrontations and with no deadly events, and January 25, 1995 was a regular day.
8. Defendant 1 and the soldiers under his command loaded the Abir in Shavei Shomron and drove back to the Territorial Brigade's base. On or about 11:30 –

12:00 they were driving on the Nablus – Tulkarm road and passed by a boys school in the Ein Beit el Ma camp (hereinafter: the "**school**"). The school consists of an elementary school and a junior high school the eldest students of which were in the 9th grade.

9. At that time school ended and the students, including the deceased, started to go home.
10. Defendant 1, who has already passed the school, ordered the Abir driver to make a U-turn, and pass by the students again, slowly, to tease them. He repeated this once or twice.
11. When the Abir was passing by the school again, defendant 1 ordered the Abir driver to stop. The driver stopped the Abir.
12. When the Abir stopped, defendant 1 went out of the car and fired one shot at the students.
13. The bullet entered through the deceased's left hip, from the back, and exited through his lower stomach. The deceased walked two meters, yelled and fell down.
14. Defendant 1 shot the deceased although neither his life nor the lives of the other soldiers were at risk.
15. Defendant 1 noticed the deceased falling, but rushed back to the car and drove off without rendering the deceased any assistance and without seeking medical treatment.
16. The school's deputy principal and a taxi driver, who passed by, rushed to the place of the shooting and found the deceased lying on the ground, bleeding from his stomach, with some vital sign nonetheless. They took him to the al-Ittihad hospital in Nablus, where he was pronounced dead.

The deceased's death certificate, which includes a medical record of the al-Ittihad hospital concerning the cause of death, and a medical report issued by the hospital are attached as an integral part of this statement of claim marked Exhibits **B** and **C**.

17. The Military Police Investigations Unit (MIU) investigated the incident. Following the investigation, defendant 1 was prosecuted in the district military court, central jurisdiction district, for causing the deceased's death, an offense under section 304 of the Penal Law, 5737-1977, and for exceeding authority to

an extent which puts a person's life or health at risk, an offense under section 72 of the Military Justice Act, 5715-1955. The military court which tried the defendant acquitted him of all charges.

18. In the interrogation which was conducted on the day of the incident, in the MIU investigation and in his testimony in the military court the defendant stated that he fired his gun into the air, without looking through the sights, in an angle of less than 70 degrees, and without giving an advance warning. Even according to defendant 1, the shooting was contrary to the IDF Open Fire Regulations which were in force at that time.

Defendant 1's Liability

19. The plaintiffs will claim that the incident and its damages were caused by the negligence of defendant 1 as manifested in his acts and/or omissions specified below:
 - a. With utter disregard for human life he tried to tease children who were leaving school for the purpose of causing a violent incident which would risk all parties involved therein.
 - b. He tried to display power, exceeding his authority and mission without having the proper force and adequate means.
 - c. He tried to display power in a provocative manner, without need and contrary to the manner in which any reasonable soldier would have acted in the circumstances of place and time.
 - d. He fired live ammunition when the shooting was not required.
 - e. He fired live ammunition although no real danger was encountered by him or another person and there was no reasonable justification for the shooting.
 - f. He shot at the direction of a group of young children.
 - g. He shot in panic and in haste.
 - h. He shot without verifying, by looking through the gun sights, that he was not putting anyone at risk.
 - i. He shot from a range which risks human lives.

- j. He shot without giving an advance warning.
 - k. He shot in a low angle towards a group of students who were standing on an elevated hill from defendant 1's standpoint.
 - l. He shot contrary to IDF Open Fire Regulations.
 - m. He acted contrary to the brigade directives and/or IDF directives which applied to the activity of IDF forces in the Nablus area at the time of the incident.
 - n. He failed to render any assistance to the deceased who was injured and failed to seek medical assistance for him.
 - o. He did not act as a reasonable soldier would have acted under the circumstances.
20. In addition, the plaintiffs will claim that defendant 1 has breached the statutory duties specified below, which were intended to protect the category of persons that the deceased was a member of, and that the breach thereof has caused his death and plaintiffs' damages:
- a. Sections 2, 4 and 11 of the Basic law: Human Dignity and Liberty, which obligate all state authorities, including IDF soldiers, to respect and protect human life and the sanctity thereof.
 - b. Section 280(1) of the Penal Law, 5737-1977, which obligates each and every civil servant, including a soldier, to refrain from taking any arbitrary action which violates a person's right by abusing his power.
 - c. Section 72 of the Military Justice Act, 5715-1955, which obligates each and every soldier to refrain from exceeding his authority to an extent which puts a person's life at risk.

Defendant 2's Liability

21. Defendant 2 is responsible for defendant 1's negligence and for his breach of statutory duties, as specified in the above paragraphs 19 and 20 to this statement of claim, in view of the fact that he was defendant 2's agent and/or acted on its behalf.

22. Defendant 2 is also responsible for the incident and its damages due to its negligence and/or its breach of statutory duties by state authorities and/or by its agents as manifested in the following acts and/or omissions:
- a. Failed to sufficiently instill in IDF soldiers, and particularly in defendant 1, the Open Fire Regulations, and the norms of conduct which were imperative under the circumstances of place and time concerning caution, restraint and distribution of responsibilities among the different forces.
 - b. Failed to brief defendant 1 before the ride during which the incident, being the subject matter of this claim, has occurred.
 - c. Failed to assign an officer or another person holding a commanding position and having proper qualifications, to command the ride during which the incident, being the subject matter of this claim, has occurred.
 - d. Assigned defendant 1 to command the ride during which the incident, being the subject matter of this claim, has occurred, despite discipline and behavior problems of defendant 1 during the period which preceded the ride.
 - e. Failed to properly watch and supervise the acts and/or omissions of defendant 1 and other IDF soldiers at the time and place of the incident.
 - f. Failed to fulfill its duties and to provide for the safety of the residents of the Area and their lives, duties imposed on it pursuant to regulations 43 and 46 of the regulations annexed to the Hague Convention on the Laws and Customs of War on Land of 1907, thus breaching a statutory duty intended to protect the residents of the Area being under belligerent occupation, including the deceased.
23. Alternatively, the plaintiffs will claim that they have no knowledge or the means of knowledge of the actual and full circumstances which caused the deceased's death. These circumstances are exclusively in the knowledge of defendant 2 and its agents which have investigated the incident, but have transferred to the plaintiffs only partial investigation material. The weapon which was used to shoot the deceased was under the control of defendant 2's agent, who was a member of defendant 2's security forces. The circumstances under which the deceased was shot at are more consistent with the negligence of defendant 2 and its agents than with the lack of negligence on their part. Therefore, the plaintiffs will claim that the rule concerning a "damage caused by facts which speak for themselves" applies to the circumstances of the incident and accordingly the onus is on defendant 2 to show that there was no

negligence for which it is liable in connection with the deceased's death and plaintiffs' damages.

24. In the alternative, the plaintiffs will claim that the onus is on defendant 2 to show that there was no negligence for which it is liable, because the incident was caused by a weapon which was owned and/or controlled by defendant 2 or its agents and the rule concerning a "damage caused by a dangerous thing" applies.

Plaintiffs' Damages

25. The deceased was 14 years old when he was shot and killed.

26. Plaintiff 2, the deceased's mother is a home maker who was widowed in 1992 when her husband passed away. Her son was expected to financially support her in the future, to assist her in her household and to provide her with such other services as are customarily provided by a son to his widowed mother for the rest of her life. This expectation was severed by the deceased's death.

27. The plaintiffs will claim that the defendants should compensate them, jointly and severally, as follows:

1. The claim of the estate:

- | | |
|--|-------------|
| a. For burial expenses, funeral, tombstone and mourning meals | 10,000 ILS |
| b. For non monetary damage, including the shortening of the deceased's life expectancy, pain and suffering and agony | 200,000 ILS |

2. Defendant 2's claim as a dependent for general damage

- a. Loss of support in the future.
- b. Loss of son's services in the future.

28. Without derogating from their right under the law to be compensated for their entire damages, the plaintiffs will claim that they should be compensated by virtue of special humanitarian considerations. This claim concerns a 14 year old child who lost his life and a widowed and bereaved mother; all as a result of a deadly shooting by an IDF soldier in circumstances which did not justify any shooting at all, all the more so a deadly shooting.

29. Local and subject matter jurisdiction is vested with this honorable court to preside over this claim.

30. Therefore, the honorable court is hereby requested to summon the defendants and order them to pay the plaintiffs their entire damages, as specified in paragraph 27 above, in addition to costs of trial, including linkage differentials and interest, from the date of the incident and until the date of actual payment.

Jerusalem, today, October 14, 1998.

Eliahu Abram, Advocate

Counsel to Plaintiffs

(File 7666, No. 20510)