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Jerusalem District Court

Jerusalem District Court

CC 1593/98

Hamaeyl v. Partok

Opening date: October 18, 1998

Matter: 202 legal procedure: regular

In the matter of: 1. Estate of the deceased, the late _____ Hamaeyl

By his legal heirs, plaintiffs 2-11

2. _____ Hamaeyl

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

9. _____

Plaintiffs 3-9 by their grandfather and guardian plaintiff No. 10

10. _____ Hamaeyl, ID No. _____

11. _____ Hamaeyl, ID No. _____

All represented by counsel Adv. Michal Pinchuk (Lic. No. 21600) and/or Eliahu Abram (Lic. No. 11851) and/or Hisham Shabaita (Lic. No. 17362) 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. _____ Partok
2. _____ Masri
3. State of Israel – Israel Police

Represented by Jerusalem District Attorney
4 Uzi Hasson Street
Jerusalem 94152
Tel: 02-6208122; Fax: 02-6252457

The Defendants

Nature of Claim: Torts, Dependents Action

Statement of Claim

1. Plaintiff 1 is the estate of the deceased, the late _____ Hamaeyl (hereinafter: the "**deceased**"), who was killed on November 8, 1994, by accident, from fire shot by defendant 1, as will be described herein-below.

The estate files the claim by the deceased's heirs as follows:

- a. Plaintiff No. 2, borne in 1962, the deceased's widow.
- b. Plaintiff No. 3, minor, borne in 1982, the deceased's son.
- c. Plaintiff No. 4, borne in 1983, the deceased's daughter.
- d. Plaintiff No. 5, minor, borne in 1984, the deceased's daughter.
- e. Plaintiff No. 6, minor, borne in 1987, the deceased's son.
- f. Plaintiff No. 7, minor, borne in 1989, the deceased's son.
- g. Plaintiff No. 8, minor, borne in 1991, the deceased's daughter.
- h. Plaintiff No. 9, minor, borne in 1993, the deceased's son.

- i. Plaintiff No. 10, borne in 1930, the deceased's father.
- j. Plaintiff No. 11, borne in 1932, the deceased's mother.

Attached is an inheritance order marked Exhibit A which constitutes an integral part of this statement of claim.

- 2. Plaintiff No. 2 is the widow of the deceased, a homemaker who was supported by the deceased who was expected to continue to support her for the rest of her life. This claim is filed by plaintiff No. 2 as a dependent.
- 3. Plaintiffs 3-9, are the minor children of the deceased. They were supported by the deceased who was expected to continue to support them at least until they were 21 years of age. This claim is filed by plaintiffs 3-9 as dependents.
- 4. Plaintiffs 10-11 are the parents of the deceased. The deceased, his wife and seven children were living in the house of the deceased's parents and were conducting a joint household. Due to his ill health the deceased's father has ceased working as early as 1988 and he and his wife, plaintiff No. 11, were supported by their son, who was expected to continue to support them for the rest of their lives. This claim is filed by plaintiffs 10-11 as dependents.
- 5. a. Defendant No. 1 served as an Israel Border Policeman at the times relevant to this statement of claim and he was the one who shot the deceased and killed him.
b. Defendant No. 2 served as an Israel Border Platoon Commander at the times relevant to this statement of claim and he was the one who ordered defendant No. 1 to fire the shot which hit the deceased and killed him.
c. Defendant No. 3, the State of Israel, was, at all times relevant to this statement of claim, responsible for the actions of the Israel Border Policemen in the Area, including, *inter alia*, the actions of defendants 1 and 2.
- 6. a. On November 8, 1994, around 12:30 pm, the deceased was near the junction of the al Maseif Street and the Cinema Jamil Street (also known as the Hospital Street) in Ramallah. The junction of these two streets is about 50 meters away from the clock square.

The deceased, who was on his way back to the village of Jaba, where he was living with his family members, plaintiffs 2-11, wanted to make some shopping in Ramallah before he returned to the village.

While crossing the junction, on his way from one shop to the other, the deceased was shot and injured in the right leg groin area.

The deceased collapsed and fell down where he was standing.

- b. The plaintiff was rushed from the place of the incident by passers-by to the governmental hospital of Ramallah, where, after about 30 minutes of resuscitation efforts, he was pronounced dead.

Attached is a death certificate marked as Exhibit **B** which constitutes an integral part of this statement of claim.

7. In retrospect, the investigation of the incident revealed that the plaintiff was shot and killed by defendant No. 1, who aimed his gun at another person in the clock square area.
8. The plaintiffs will claim that they have no knowledge or the means of knowledge of the circumstances which caused the deceased's death and that the deceased's death was caused by a weapon which was under the exclusive control of the defendants and that the deceased's death is more consistent with the conclusion that the defendants failed to exercise reasonable care than with the opposite conclusion. Therefore, the onus is on the defendants to show that no negligence was involved in the death of the deceased for which they are liable.
9. In addition, the plaintiffs will claim that the deceased was killed by a dangerous thing which was owned and/or controlled by the defendants and therefore, the onus is on the defendants to show that there was no negligence concerning the dangerous thing for which they are liable.
10. In addition, and without derogating from their claim concerning the burden of proof, the plaintiffs will claim that the deceased was killed as a result of the negligence of defendant No. 1, who shot the deceased, and as a result of the negligence of defendant No. 2 who ordered to open fire, which were manifested in the following acts and/or omissions:
 - a. Ordered to open fire and/or opened fire without justification under the circumstances without confirming the identity of the target of the shooting and/or in an uncontrolled manner.

- b. Ordered to open fire and/or opened fire in a commercial and crowded area putting human lives at risk.
 - c. Ordered to open fire and/or opened fire although no real danger was encountered by him or his friends, under circumstances which did not justify the shooting.
 - d. Ordered to open fire and/or opened fire without making sure that innocent passers-by, including the plaintiff, would not be injured there from.
 - e. Ordered to open fire and/or opened fire without an advance warning as required under such circumstances under the IDF Open Fire Regulations.
 - f. Ordered to open fire and/or opened fire at the deceased from a close range, contrary to the Open Fire Instructions, thus causing his death.
 - g. Failed to do whatever reasonable policemen should and/or could have done to prevent the shooting and killing of the deceased.
 - h. Failed to act as a reasonable commander and/or policeman would have acted under the circumstances.
 - i. Acted contrary to the directives of the supreme command and/or contrary to the orders of the national headquarters and/or contrary to the permanent orders of the Police and/or to the orders of the Border Police and/or contrary to IDF operating orders and/or territorial orders and/or contrary to the Open Fire Regulations and/or contrary to the orders given to them under the law.
 - j. Failed to give any assistance to the deceased after he was injured and did not seek medical assistance for the deceased.
11. The plaintiffs will further claim that defendants 1 and 2 breached statutory duties which, by their nature, were intended to protect the deceased and that such breach caused damage of the kind contemplated by the enactment.

The defendants breached the following statutory duties:

- a. Sections 1, 2, 4 and 11 of the Basic law: Human Dignity and Liberty, which prohibit any violation of the life of any person and which obligate all state authorities to respect and protect human life and the sanctity thereof.
- b. Section 13 of the second addendum of the Police Ordinance [New Version], 5731-1971 which prohibits the use of any weapon by a

policeman in a manner which is not consistent with the required level of care or contrary to the Israel Police Ordinance.

- c. Section 304 of the Penal Law, 5737-1977, which prohibits to cause a person's death by negligence.
12. Defendant No. 3 is vicariously liable for the negligence of defendants 1 and 2 and for their breach of statutory duties acting as its agents and/or on its behalf.
 13. The plaintiffs will claim further that defendant No. 3 is directly liable for the killing of the deceased and for their damages, due to its negligence, which is manifested in the following acts and/or omissions:
 - a. Although it knew and/or should have known that, in the past, an innocent woman was killed from an inaccurate shooting at the same spot in which the deceased was killed, it did not send the soldiers of the company, in general, and defendants 1 and 2, in particular, for training, to practice and increase their shooting accuracy.
 - b. Although it knew and/or should have known that, in the past, an innocent woman was killed from an inaccurate shooting at the same spot in which the deceased was killed, it did not prevent the policemen of the company of which the defendants were members, in general, and defendants 1 and 2 in particular, from firing a deadly weapon in that crowded area.
 - c. Assigned to the mission an unskilled force and/or a force lacking an appropriate commanding faculties.
 - d. Did not supervise and/or did not properly supervise the acts and/or omissions of the Israel Border policemen in the Area, in general, and in the area in which the deceased was killed, in particular.
 - e. Failed to properly brief the policemen and emphasize their duty to maintain public order, public well-being and safety and to safeguard human life.
 - f. Failed to clarify to the policemen the Open Fire Regulations concerning the open fire circumstances of live ammunition and/or rubber bullets, shooting path and direction.
 - g. Failed to act as a responsible, prudent and intelligent authority would have acted under the circumstances of place and time, to prevent the injury which was inflicted upon the deceased.

- h. Acted negligently by allowing the policemen who participated in the shooting to fire their weapons unlawfully.
 - i. Failed to fulfill its duties and purposes under the law and to provide for the safety of the residents of the Area in general and of the deceased, in particular, pursuant to regulations 43 and 46 of the regulations annexed to the Hague Convention on the Laws and Customs of War on Land (1907).
14. The deceased, who was 33 years of age upon his death, was working, prior to his death, as a construction and renovations manager and earned about 3,500 ILS per month (as of the date of his death). Were it not for his death, he was expected to increase and augment his earnings.
15. Prior to his death the deceased was healthy in body and mind and were it not for his killing he would have continued to work at least until he was 65 years old, i.e., a period of about 32 additional years.
16. The deceased supported his extended family by maintaining their joint home, providing education to his children, shopping and by providing such other services as are customarily provided by a devoted family man to his children, wife and parents.
17. The deceased used his entire earnings to provide for the needs of the members of his extended family and for the needs of the household.

Were it not for his death the deceased would have continued to support his family and to use, for this purpose, his entire earnings, until his retirement.

18. Several months after the deceased's death, his widow has commenced to receive a monthly allowance in an amount equal to 400 ILS per month from the Palestinian Authority. This allowance and the yield of one dunam of land owned by the family are the sole source of income of plaintiffs 2-11 who are forced, from time to time, to beg alms to make a living.
19. The plaintiffs will claim that the defendants should, jointly and severally, compensate them as follows:

1. The claim of the estate:

- a. For burial expenses, funeral, tombstone, travels and mourning meals 15,000 ILS
- b. For non monetary damage, including the shortening of the deceased's life expectancy, pain and suffering and agony 200,000 ILS

2. The dependents' claim:

Special damage:

- a. Loss of support in the past 200,000 ILS
- b. Loss of husband's, father's and son's services in the past 22,500 ILS

General damage:

- a. Loss of support in the future
- b. Loss of husband's, father's and son's services in the future

20. All claims in this statement of claim are made in the alternative or in a complementary manner, all in accordance with the nature and context of things.

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

22. Therefore, the honorable court is hereby requested to summon the defendants and order them to pay, jointly and severally, plaintiffs' entire damages arising from the killing of the deceased, together with linkage differentials and interest, from the filing date of this statement of claim and until the date of actual payment, in addition to costs of trial.

Jerusalem, today, October 14, 1998.

Michal Pinchuk, Advocate
Counsel to Plaintiffs

Attached: Exhibits A-B
(File 6922, No. 21177)