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The Magistrates Court in Jerusalem
CApp. 4649/97
Saed Wahir Zalah v. The State of Israel
Opening date: 17 March 1997

Procedure: Ordinary

At the Magistrates Court in Jerusalem

In the matter of: **S. Jawabiri**

Represented by counsel Adv. Hala Huri and/or
Eliahu Abram and/or Hisham Shabaita
of the Center for the Defence of the Individual
founded by Dr. Lotte Saltzberger
4 Abu Obeidah St., Jerusalem 97200
Tel. 02-6283555, Fax 02-6276317

The Plaintiff

v.

The State of Israel

Represented by the Office of the District Attorney of Tel Aviv
(Civil Department)
1 Henrietta Szold St. Tel Aviv 64924
Tel. 03-6970222; Fax 03-6918541

The Defendant

Nature of the claim: **Bodily Injuries**

Amount of the claim: **NIS 271,915**

Complaint

1. The Plaintiff was born in 1975, and is a resident of the Northern Neighborhood of Kafr Ra'i in the District of Jenin.
2. The Defendant, the State of Israel, was at all times relevant to the Complaint in charge of the actions of IDF soldiers in the area of Kafr Ra'i in the District of Jenin.

3. In the afternoon hours of 27 July 1993, the Plaintiff left his house, via the main road of Kafr Ra'i, in the direction of his aunt's house, located near the high school for boys in the village.
4. When the Plaintiff approached his aunt's house, he noticed a military Jeep that stood opposite him, approximately 150 meters away. Several soldiers got off the Jeep.
5. The soldiers who got off the Jeep stopped young Palestinians who walked by and checked their I.D.s.
6. While the Plaintiff was standing and watching what was going on, he heard a voice behind him asking in Arabic "where's the army" (wein il-jeish).
7. The Plaintiff turned his head to face the voice, at which point he saw two young men in civilian dress standing approximately 4-5 meters away from him, who subsequently turned out to be soldiers from a special unit.
8. One of the said soldiers fired a single shot in the air, and then aimed his rifle at the Plaintiff and shot him in the right buttock and the left thigh.
9. The Plaintiff collapsed on the floor, but did not lose his consciousness (hereinafter: the "Incident").
10. One soldier spoke on the walkie-talkie while the other aimed his rifle at the Plaintiff's head, while the Plaintiff was lying on the floor, searched his body and asked him his name.
11. Immediately after the Plaintiff answered the soldier's question, the soldier slapped the Plaintiff twice on his cheeks.
12. Several minutes later, a group of soldiers that was in the village arrived on the scene. One of the soldiers from the group that had arrived approached the Plaintiff and told him he was a doctor.
13. The doctor soldier gave the Plaintiff first aid, bandaged the Plaintiff's left leg that was bleeding badly, and applied pressure to his abdomen.
14. The soldiers placed the Plaintiff on a stretcher and transferred him in a military vehicle to Kafr Fahma, which is close to Kafr Ra'i. On the way, he was given a blood transfusion.

15. The Plaintiff was transferred by helicopter from Kafr Fahma to the Sheba Hospital in Tel Hashomer.
16. The Plaintiff emphasizes that he did nothing, nor took part in any action of any kind which could have provided grounds for shooting at him.
17. It should be noted that after being released from a long period of hospitalization in various hospitals, the Plaintiff was neither arrested nor indicted of any charge.

The Soldiers' Liability

18. 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. Used live fire in circumstances that did not justify such use.
 - b. Used live fire with the clear intention of hitting the Plaintiff, thus endangering his life and/or body.
 - 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 live fire negligently and/or in violation of the regulations on the use of live fire.
 - e. Opened fire while facing no material danger and with no justification or cause to open fire.
 - f. Fired toward the body in the circumstances mentioned in this subsection above, without first performing the procedure for the detention of suspects.
 - 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.
19. In the event that any act or omission constituting the negligence that caused the accident was performed and/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

20. 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.
21. The Defendant 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 supervise and/or properly to 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.
 - 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 fire unlawfully.
22. 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/s 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 which has to prove that the accident occurred through no negligence on its part.
23. 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.
24. 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 events which are the subject matter of the Complaint.

The Plaintiff's Damage

25. The Plaintiff was hospitalized at Sheba Hospital in Tel Hashomer for 12 days, where he was diagnosed as suffering from gunshot wounds to his buttock, left thigh and abdomen and from peritoneal irritation.
26. At Sheba Hospital, the Plaintiff underwent abdominal surgery, at which an intestinal injury was found. This injury was treated by suture and partial amputation. In addition, surgery was performed to the thigh with a tying of the superficial femoral vein, and anterior fasciotomy to the thigh and extraction of foreign bodies.
27. 5 days after his hospitalization at Sheba Hospital, the Plaintiff underwent another thigh operation to stop a hemorrhage.
28. The Plaintiff was released from Sheba Hospital on 8 August 1993 with a recommendation for continued medication, commencement of walking and monitoring, and continued physiotherapy.
29. On the same day, 8 August 1993, the Plaintiff was transferred to Al-Itihad Hospital in Nablus to continue his treatment.
30. The Plaintiff was hospitalized at Al-Itihad Hospital for 15 days, where he was monitored and x-rayed several times.
31. On 23 August 1993, the Plaintiff was released to his home at Kafr Ra'i. He remained bedridden, but three days later his condition deteriorated and once again he was taken to Al-Itihad Hospital in Nablus. For a few days, the Plaintiff remained at Al-Itihad Hospital, was treated for severe intestinal pain and released to his home.
32. After the Plaintiff's release from hospital, he continued receiving ongoing and regular medical treatment, both from private physicians and at medical institutions, including in many hospitals around the West Bank and in Jerusalem.
33. The Plaintiff received rehabilitative physiotherapy at various places until 9 March 1995. He was first treated at the Rehabilitation Department at the Beit Sahur YMCA, followed by physiotherapy at the Beit Jala Arab Association, and finally by Jam'iyyat Asdiqa' al-Marid in Jenin.
34. On 21 October 1994, the Plaintiff was admitted to Rafidiyya Hospital in Nablus for another operation for the extraction of a foreign body (a bullet).

35. As a result of the Incident and the injury, the Plaintiff complains of pain and interference to the sensation in his left thigh.
36. The Plaintiff was left with surgical scars on his abdomen, approximately 20 cm in length, scars on his left thigh, approximately 12 cm long medial and approximately 9 cm long lateral, and scars on the left thigh – approximately 12 cm proximately medial and approximately 9 cm lateral, and scars on the buttock, 2 cm and 3 cm long.
37. As a result of the Incident and the injury, the Plaintiff has difficulties with extended walking, and *a fortiori* with running. Furthermore, the Plaintiff is unable to perform work which requires physical effort and cannot carry heavy objects.
38. A specification of the Plaintiff's orthopedic disability appears in Dr. Uri Frenkel's opinion of 29 September 1996 (which is attached to this Complaint as Exhibit A and constitutes an integral part hereof), based on which the Plaintiff was determined to have permanent disability at the rate of 19%.
39. The Plaintiff shall claim that owing to the injury and his medical orthopedic disability, he suffered an injury to and a severe deterioration of his working capacity and functioning, in such a manner that as of today and from the date of occurrence of the accident, the Plaintiff is unable to perform any work which requires physical effort.
40. Before the Incident, the Plaintiff worked as a street cleaner in the village, and earned a total of NIS 1,000 per month.
41. Since the Incident to the present day, the Plaintiff has not returned to work.
42. The Plaintiff shall further claim that as a result of his injury, the long and exhausting treatment he received, the painful surgery he underwent, the difficulties he has exerting physical effort and the unsightly scars left on his body, he was caused severe pain and suffering, and that the said injuries affected the normal course of his life as being prior to the Incident.
43. **Following is a specification of the damage suffered by the Plaintiff due to the Incident:**

Specific Damage

- | | | |
|----|-----------------------|-------------------|
| a. | Past lost earnings | NIS 3,667 |
| b. | Past medical expenses | <u>NIS 10,000</u> |

<u>Total specific damage</u>	NIS 13,667
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General Damage

a.	Pain and suffering	NIS 120,000
b.	Loss of future earnings	NIS 138,248

<u>Total general damage</u>	<u>NIS 258,248</u>
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<u>Total specific and general damage</u>	<u>NIS 271,915</u>
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44. 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 43 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.

Jerusalem, 17 March 1997

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Hala Huri, Adv.
Counsel for the Plaintiff

Encl. Medical opinion of Dr. Uri Frenkel

(T.S. 4931, M.M. 18133)