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The Magistrates Court in Jerusalem  
Civ. 2900/98  
Birawi v. The State of Israel  
Opening date: 5 February 1998

Procedure: Ordinary

### **At the Magistrates Court in Jerusalem**

In the matter of:

**Birawi**

represented by attorneys Hala Huri and/or  
Eliahu Abram and/or Hisham Shabaita  
and/or Ali Haider  
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 Plaintiff**

v.

**The State of Israel**

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 Defendant**

Nature of the claim: **Bodily Injuries**

### **Complaint**

1. The Plaintiff was born in 1973 and is a resident of 'Asira ash Shamaliya in the District of Nablus.
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 Nablus.

### **The Incident**

3. On 13 May 1994, at around 13:30, the Plaintiff was walking with his friend along Hattin street in Nablus, toward the employment bureau.

4. At the same time, a military automobile rode along Al-Hadadin street in Nablus, which is the main street lying near Hattin street. One of the soldiers in the military automobile fired a live bullet from his rifle toward Hattin street, without any justified cause, and hit the Plaintiff in the left thigh.
5. The Plaintiff was immediately rushed to Al-Ittihad Hospital in Nablus.
6. While the Plaintiff was hospitalized at Al-Ittihad Hospital, policemen came to the hospital and took his statement.
7. The Plaintiff emphasizes that he did nothing, nor took part in any act of any kind which could have presented grounds for shooting at him.

#### **The Soldiers' Liability**

8. 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 Plaintiff's injury, 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 indiscriminately in a residential area, while endangering human life.
  - 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 subsection (a) above [sic], and without verifying that innocent passersby are not injured thereby.
  - g. Opened fire without receiving a permit from the soldier authorized therefor.
  - 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 them by law and/or

against statutory duties designed to safeguard the body and health of persons of the Plaintiff's type.

- i. Failed to do everything within the power and ability of a reasonable soldier to prevent the shooting incident.
  - j. Failed to act as would have a reasonable soldier under the circumstances.
9. In the event that any act or omission constituting the negligence that caused the incident 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 incident and for payment of the damage caused to the Plaintiff.

### **The Defendant's Liability**

10. 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.
11. 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 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.
  - 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 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.
  - 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 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/s to shoot unlawfully.
  - k. Acted negligently by allowing the soldier/s to use fire unlawfully.
12. Alternatively, the Plaintiff shall claim that he neither knows, nor can know, the real circumstances that caused the incident, but since the weapon from which the Plaintiff was shot was under the control of the soldier or the soldiers 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 that has to prove that the incident occurred through no negligence on its part.
13. Alternatively, the Plaintiff shall claim that the Defendant 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 the soldier/s, the Defendant's agents, and the "dangerous instrumentality" rule applies.
14. 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 Defendant is further requested to disclose all field operations records of the defense forces from the day of the incident.

**The Plaintiff's Damage**

15. The Plaintiff was hospitalized at Al-Ittihad Hospital in Nablus for 6 days. The x-rays showed that as a result of the injury, the Plaintiff suffered from a femoral fracture in the left leg and his leg was placed in a plaster cast.
16. After being released from Al-Ittihad Hospital, the Plaintiff remained bedridden at home for six weeks. During this time, the Plaintiff received ongoing medical treatment and was monitored at the Al-Ittihad Hospital clinics.
17. The Plaintiff's leg was in a cast for three months. Thereafter, the Plaintiff underwent physiotherapy twice a week.
18. Before the incident, the Plaintiff worked as a salesman in a furniture factory and store in Nablus, and earned NIS 3,000 per month.

As a result of the incident, the Plaintiff was absent from work for three months.

19. Following is a specification of the damage caused to the Plaintiff due to the incident:

a.	Past lost earnings	NIS 9,000
b.	Past medical expenses	NIS 2,000
c.	Pain and suffering	NIS 30,000
	<b>Total damage</b>	<b>NIS 41,000</b>

20. In addition, and without derogating from the aforesaid, the Plaintiff shall claim that the circumstances of his injury, as an innocent passerby, who was shot through no fault of his own, constitute special humanitarian grounds which justify his compensation.
21. 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 18 above [sic], and to charge the Defendant with payment of the trial expenses and V.A.T. as set out in the law, and all in addition to indexation [sic]

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Hala Huri, Adv.

Counsel for the Plaintiff

Jerusalem, 4 February 1998

(T.S. 6438, M.M. 20036)