

Translation Disclaimer: The English language text below is not an official translation and is provided for information purposes only. The original text of this document is in the Hebrew language. In the event of any discrepancies between the English translation and the Hebrew original, the Hebrew original shall prevail. Whilst every effort has been made to provide an accurate translation we are not liable for the proper and complete translation of the Hebrew original and we do not accept any liability for the use of, or reliance on, the English translation or for any errors or misunderstandings that may derive from the translation.

The Magistrates Court in Jerusalem

Civ. 4545/98

Abu Fara v. The State of Israel

Opening date: 10 March 1998

Type of matter: 202 Procedure: Ordinary

At the Magistrates Court in Jerusalem

In the matter of:

_____ **Abu Fara**

represented by attorneys Hisham Shabaita and/or
Eliahu Abram and/or Hala Huri 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. 03-6970282; Fax 03-6918541

The Defendant

Nature of the claim: **Damages for Bodily Injuries**

Amount of the claim: **Up to the Jurisdiction Ceiling**

Complaint

1. The Plaintiff was born in 1972 and is a resident of the village Surif in the District of Hebron.
2. The Defendant, the State of Israel, was at all times relevant to the Complaint in charge of the actions of IDF soldiers and/or other security personnel who acted on its behalf in the area of the village Zureif in the District of Hebron (hereinafter: the Defendant).

3. On 11 June 1991, at around 15:30, after a hard day's work in Tel Aviv, the Plaintiff got off the bus in the center of the village Zureif and walked towards his home, close to the center of the village Zureif.
4. While walking along, approximately 100 meters away from his home, the Plaintiff noticed a young man lying on the ground, who appeared to be unconscious and wounded, and was bleeding from the right leg (hereinafter: the Wounded Man). Looking for a way to help the Wounded Man, the Plaintiff noticed a Mercedes (Benz model) truck with a local license plate parked a short distance away from them. The Plaintiff dragged the Wounded Man toward the truck, intending to put him in it.
5. When the Plaintiff arrived at the truck, and immediately after he moved the tarpaulin on the back of the truck, in an attempt to put the Wounded Man inside, he suddenly noticed approximately ten men, some dressed as soldiers and some in civilian dress, hiding in the back of the vehicle (hereinafter: the Soldiers).
6. The Soldiers, who appeared to be surprised to see the Plaintiff, stormed the Plaintiff, one of them throwing his arm around the Plaintiff's neck and trying to strangle him, while two others held the Plaintiff's hands.
7. The Plaintiff, who felt that he was suffocating, tried to release himself from the Soldier's grip, and succeeded. The Plaintiff started running in an attempt to escape from the Soldiers. Several meters away, the Plaintiff heard several shots, continued running for a short distance and fell down. At this point, the Plaintiff realized that he had been shot by the Soldiers in both legs.
8. The Soldiers went over to the Plaintiff and put him on a stretcher. A military paramedic gave the Plaintiff first aid.
9. The Plaintiff was taken by the Soldiers to a nearby military camp, and from there was transferred by a military ambulance, first to Aliya Hospital, and then, in view of the severity of the injury, to Hadassah Ein Kerem Hospital in Jerusalem, where he underwent several operations on both legs and was hospitalized for about two weeks.
10. On 16 March 1992, the Plaintiff tried to file a complaint on the incident at the Hebron Police. Since the soldier who stood at the entrance to the station refused to let him in, the Plaintiff filed, on 1 April 1992, this time through the Center for the Defence of the Individual, a complaint with the Military Advocate of Central Command.

In a letter dated 3 March 1994, the Military Advocate of Central Command notified the Plaintiff that a decision had been made to close the case, on the grounds that, *inter alia*, **"No soldiers who were involved in the incident were found, but a**

record was found from the same day, whereby the complainant was shot after having been identified as throwing stones at IDF forces".

11. The attempts of the Center for the Defence of the Individual to peruse the said report, were answered in a letter from the Office of the Military Advocate of Central Command dated 8 September 1994, which read as follows: "**As for the report - it is a weekly report that is prepared on the basis of reports that are made by forces operating in the field, and the person making the report has no knowledge of the identity of the soldiers who gave the reports recorded therein. Therefore, questioning the person who made the report would not contribute to uncovering the identity of the soldiers and to verifying the contents thereof**".

The Soldiers' Liability

12. 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, as expressed in the following acts and/or omissions, namely that they:
- a. Fired under circumstances that did not justify such use.
 - b. Fired indiscriminately and/or without justification 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 a weapon negligently and/or in violation of the regulations on the use of fire.
 - e. Opened fire while facing no danger and/or no material danger and with no justification or cause to open fire.
 - f. Opened fire without receiving a permit from the soldier authorized therefore.
 - 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 reasonable soldiers to prevent the shooting incident.

- i. Failed to act as would have a reasonable soldier under the circumstances.
13. 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

14. 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.
15. 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 and/or Soldiers.
 - 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 and/or Soldiers 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 accident.
 - i. Acted in violation of the rules of safety and in per se negligence.
 - j. Acted negligently by allowing the shooting Soldier and/or Soldiers to shoot unlawfully.
 - k. Acted negligently by allowing the Soldier and/or Soldiers to use fire unlawfully.
16. In addition, 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 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 therefore 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.
17. 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 and/or Soldiers, the Defendant's agents, and the "dangerous instrumentality" rule applies.
18. The Plaintiff does not know the identity and/or names of the Soldier and/or Soldiers and/or defence 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 defence forces from the day of the incident.

The Plaintiff's Damage

19. As a result of the Soldiers' acts and/or omissions, the Plaintiff was hit by three bullets in each one of his legs. Consequently, the Plaintiff suffered a fracture in the tibia of the left leg, and serious injury to the arteries and blood vessels in his right leg.

20. After undergoing several operations at Hadassah Hospital, as aforesaid, the Plaintiff's left leg was in a plaster cast, and his right leg bandaged, for approximately ten months.

During this period, the Plaintiff was bedridden for most of the day, and unable to perform even the simplest of daily tasks.

21. At the end of the said ten-month period, the examination in the hospital revealed that the fracture in the left leg did not heal properly. The doctors at the hospital were therefore forced to break his left leg again, in order to cause it to heal properly. The Plaintiff's leg was in a plaster cast for another six months.

During this period too, the Plaintiff suffered from severe movement restrictions, and was forced to remain at home, bedridden, for most of the day.

22. Approximately six months later, after the cast was removed from the Plaintiff's leg, the Plaintiff continued to suffer from severe movement restrictions for another six months or so, was forced to walk with crutches and suffered severe pain in his legs.

23. Throughout this entire period of time, the Plaintiff needed help from his parents, brothers and other family members, who supported the Plaintiff and helped him. It should be noted that for over a year, as aforesaid, the Plaintiff was unable to perform the simplest of daily tasks.

24. To this day, the Plaintiff suffers from numerous disfiguring scars and functioning difficulties in his legs, which result from the injury to his leg muscles.

Consequently, the Plaintiff suffers pain, difficulties walking and difficulty in functioning, particularly in his two legs.

25. Dr. M. Livni, an orthopedic surgeon, examined the Plaintiff and determined that he had a 20% disability due to the extensive scar on his legs, and a 10% disability due to the injury to the antagonist muscles of the right foot.

Dr. Livni's opinion is attached to this Complaint as Exhibit A and constitutes an integral part hereof.

26. In addition, the Plaintiff was examined by Prof. Y. Barletsky, an expert on vascular surgery, who determined that the Plaintiff had permanent disability of 40% in the

blood vessels in his legs. Prof. Barletsky's opinion is attached to this Complaint as Exhibit B and constitutes an integral part hereof.

27. Nevertheless, the Plaintiff shall claim that his actual loss of working capacity exceeds the degree of his medical disability, considering the fact that prior to the incident, the Plaintiff worked as a construction worker, which is a purely physical labor, and in view of the level of his education.

28. The Plaintiff shall claim, in addition, that prior to the incident he was both physically and mentally healthy, and earned a steady income for himself and his family. After the incident, and as a direct result thereof, the Plaintiff's life underwent a complete transformation, and he became a disabled person, suffering from various disabilities, as specified above, which has affected and damaged his joy of life and life's pleasures.

The Plaintiff shall further claim that without derogating from the Defendant's lawful liability to compensate the Plaintiff, the Plaintiff is entitled to damages from the Defendant also on humanitarian grounds, in view of both the circumstances of the incident as described above, and the Plaintiff's disability.

29. Following is a specification of the damage caused to the Plaintiff due to the incident, compensation for which he is entitled to claim - and is claiming - from the Defendant:

Special Damage:

a.	Past medical and travel expenses:	NIS 50,000
b.	Third party aid	NIS 40,000
c.	Past lost earnings	<u>NIS 60,000</u>
	Total special damage	NIS 150,000

General Damage (as determined by the Honorable Court):

- a. Loss of Plaintiff's earning capacity and/or working capacity and/or future pension
- b. Future third party aid
- c. Medical and psychological treatment
- d. Travel and other medical expenses
- e. Pain and suffering

30. All arguments made in this Complaint are argued cumulatively and/or alternatively and/or complementarily, all as the context prescribes. Wherever reference is made herein to the burden of proof or the dereliction, such argument is made against the Defendant and against its respective employees, representatives and agents, all as prescribed by the context.
31. The Honorable Court has the territorial and the subject matter jurisdiction to hear the Complaint.
32. 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 29 above, and to charge the Defendant with payment of the trial expenses, and all in addition to differences of indexation and interest from the date of the incident until actual payment.

Jerusalem, 10 March 1998

(-)

Hisham Shabaita, Adv.
Counsel for the Plaintiff

Exhibits: Opinions of Dr. Livni and Prof. Barletsky

(T.S. 2246, M.M. 20112)