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[ Emblem of the State of Israel ]
**The Courts**

**At the Magistrates Court in Jerusalem** **C.C. 010095/96**

**Before the Hon. Justice R. Carmel** 1

In the matter of: **_______ Aljolani**
represented by Attorney Hale Huri
**The Plaintiff**

**v.**

**The State of Israel**
represented by the Jerusalem District Attorney's Office by Attorney Bahat
**The Defendant**

# Judgment

1. The Plaintiff filed his complaint with regard to an 8 July 1989 incident in which his car was burned down. As the Plaintiff claims in his complaint, on 7 July 1989 he was traveling in his car in the early evening hours in proximity to the Kiryat Zanz neighborhood in Jerusalem. His car, which was a 1982 model double-cabin Volkswagen, broke down, and the Plaintiff was forced to abandon his car and leave it in the neighborhood. Since the said date fell on a Friday, the Plaintiff left the car there for the Sabbath, according to him in order not to hurt the feelings of the ultra orthodox residents of the neighborhood. On the following day, after sundown on the Sabbath, the Plaintiff returned to the Kiryat Zanz neighborhood together with a mechanic on his behalf and a tow truck owner, in order to retrieve the broken down car. The Plaintiff further claims that when he got to the place where the car was parked, he found a gathering of residents. The crowd threw stones at the Plaintiff and his escorts, and the Plaintiff and his escorts noticed that the windows of the car had been shattered and its tires slashed. The Plaintiff further claims that he was unable to get close to the car due to the stone throwing, and went to the police station at the

Russian Compound together with the mechanic to alert the police. The policemen at the Russian Compound station gave the Plaintiff no assistance, and at around 23:30 the car was set on fire. The complaint is in connection with the damages caused to the Plaintiff due to the arson of the car, claiming that the Defendant, namely the State of Israel, is liable for his damages due to the negligence of the policemen as provided in Sections 22 and 26 of the complaint. The Plaintiff has further claimed, alternatively, that the Defendant was negligent per se by breaching the statutory duty set forth in Section 3 of the Police Ordinance [New Version], 5731-1971.

2. The Defendant has claimed in its answer that the complaint was filed one day before the expiration of the statute of limitations, a fact which has compromised its ability to defend itself. The claim that the car was indeed set on fire by unknown persons on 7 August 1989 was not denied, but it was denied that the Plaintiff turned to the police to file a complaint on the evening of the incident, as claimed in the complaint.

3. The main question which requires resolution is whether the Plaintiff did indeed come to the police to complain on the night of the incident, and if so, what was the content of his complaint. There appears to be no dispute that if the Plaintiff did indeed come to the police and give a clear and explicit advance warning that the crowd was sabotaging and damaging his car, and that it was possible that his car would be set on fire by the rioting crowd, then the State is liable for the Plaintiff's damages pursuant to the laws of negligence. The rule is that where the State's authority is an "**executive authority**", then there is "no conceptual difficulty in holding the State liable", as distinguished from a "supervisory authority", namely, where the authority of the State is that of "supervision" only, including decisions requiring discretion. This rule was set forth in the precedent cited also by the Plaintiff's attorney, C.A. 429/82 **The State of Israel v. Suhan**, PDI 42 (3) 733. The issue was subsequently discussed at length also in C.A. 915/91 **The State of Israel v. Levy et. al.,** PDI 48 (3) 45. In the Levy case, the court discussed the elements of the tort of negligence (in general), and, *inter alia*, reiterated the rule whereby the duty of caution is divided into a "technical" (or "physical") duty of caution, and a "normative" duty of caution. The test for the existence of a duty of caution is the test of predictability, and the question which has to be decided is whether the tort-feasor could and ought to have foreseen that the injured party would suffer the damage that actually occurred as a result of his negligent act. Not every foreseeable damage (from the physical point of view) is

damage which ought to be foreseen (on the normative level). Damage which is foreseeable on the physical level is foreseeable also on the normative level, unless special considerations justify limiting or denying the duty, despite the predictability. It was further mentioned in that case that the existence of the duty of caution comprises three components: “predictability”, “proximity” (or closeness), and a judicial conclusion that the imposition by law of a normative duty of caution is fair, just and reasonable. The requirement of “proximity” means that a duty of caution is owed to a “neighbor” and not to the whole world; predictability is a **necessary**, but not a sufficient, condition precedent to the existence of the duty of caution. The court stated in the Levy affair that in situations in which there is **control** of the process, it is easier to recognize the “proximity” between the parties, whereas in situations in which the connection between the authorities and the citizen comes down to supervision only, it is harder, although not impossible, to impose a duty of caution upon the authorities. The State, so it was ruled, is liable like any other person for **negligent acts**, and the authorities have a duty of caution whenever the damage caused to the injured party ought to have been foreseen. The aforesaid leads to the conclusion that if the Plaintiff did not alert the police to the possibility that damage was about to be caused to his car, or that it would be set on fire due to the rioters’ acts, then, where the Plaintiff did not foresee this possibility, it is hard to demand of the police, whose representatives are not claimed to have been on the scene when the Plaintiff first got there, to have, indeed, foreseen such a possibility. In this matter it should also be kept in mind that the car had a yellow license plate[1], namely the Plaintiff was not specifically associated with the car and, in any case, no such claim was made.

In order to decide this matter, one needs to review the evidence as presented by the parties.

4. The Plaintiff, in his direct testimony affidavit, repeated his version as specified above, whereby he went with a mechanic by the name of A. to get help from the police station at the Russian Compound; however, he was told there by the policeman to whom he complained that he could not help him, and was instructed to wait until morning to return to the scene to retrieve the car. According to him, in his affidavit,

[1] Translator’s note: Israeli license plates are yellow; cars from the Occupied Territories have blue license plates.

he returned from the police station to the scene and from there, having no choice, back home. In his affidavit, his version is different than that specified in the complaint (as clarified below), whereby he noticed that the car had been burned down only on the following day, when he returned to the scene. He further states in his affidavit, *inter alia*, that at that time there were nationalistically motivated harassments of Arabs by Jews, and that one of the focuses of such harassments was the neighborhoods of Sanhedria and Shmuel Hanavi in Jerusalem, which are close to the scene of the incident.

In his examination, the Plaintiff clarified that he had gone with the mechanic A. A. to seek help from the police, while the tow car driver A. J. remained at the scene to observe what was going on. He also confirmed in his examination that when he returned from the police the car was not burned down, and to the question: "**when did you first see that the windows were broken**" he answered: "**I saw everything on Sunday morning**". Later in his examination, he also confirmed that he saw that the tires had been slashed on Sunday morning. However, in his affidavit of 22 February 1991 (D/1), the Plaintiff said: "**on the following evening, on 8 August 1989 [sic] after sundown on Saturday, I came to the car with a mechanic and already saw that the windows had been smashed and that the tires on the left hand side had been slashed**". When he was asked to explain the two versions he said: "**I can't remember, I don't know who wrote and how**". The Plaintiff was asked the same question again, and his answer to the discrepancy between the versions was that he had no recollection (p. 10 of the transcript). Nor did he remember, when asked about it, why in affidavit D/1 he only mentioned the mechanic and not J., the tow truck owner. In his statement at the police, D/3, a statement dated 9 July 1989, the Plaintiff said "**on Saturday night at 21:00 I came to my car in order to start it and move it away, and then there were many religious people there who started throwing stones at me and yelling, I saw that everything was alright with my car but I was afraid of the religious people so I ran away from there, I went to the police and they told me to bring the car to the police station the following day, but I was afraid to go back to the car and said that I would come this morning to the car to get it out of there. This morning at 9:00 I came to the car and saw that it had been burned down…**". The differences between the versions and the significance thereof shall be referred to below.

5. A. I. is the tow truck driver who arrived at the scene with the Plaintiff on Saturday night. According to him, he arrived on the scene at around 20:00 or 21:00 with the Plaintiff and with a mechanic he didn't know. When they arrived at the place they noticed a gathering of people around the car and that the car had been damaged, a fact which prevented them from getting close to the car. According to him, in his affidavit, the Plaintiff and the mechanic went to file a complaint with the police, and approximately one hour later they came back and said that the policemen had told them to go home and that the police would take care of the matter. When they returned the following day, they noticed that the car had been burned down.

   This witness also gave an earlier affidavit, of 20 October 1995 (D/4), before the complaint was filed, in which he said that he and the Plaintiff went to the scene of the incident on Saturday night. After they saw the crowd at the scene and the rioters who had started shattering the glass in the car, the Plaintiff left him and went to the police and he waited there: "**meanwhile, people started burning down the car… H. returned and said that the policemen asked him to go home and that they would take care of it**". In his testimony, he repeated his version in affidavit D/4 and said that on the night of the incident, he saw that damage was being caused to the car but did not see that it was being set on fire, and that he discovered this fact only on the following day.

6. Policeman Reuven Medini testified for the State. In 1989 he was an investigator in the Serious Crimes Division, and was, within the framework of his duties, one of the investigators who investigated the incident which is the subject matter of the complaint. According to him, the police learned of the arson from an informant who called himself Friedman, who gave his statement on 8 July 1989 at 23:55. Following this notice, patrolmen and police investigators, and another policeman on behalf of the fire fighting services, arrived on the scene. The witness took the Plaintiff's statement on the following day, 9 July 1989 at 9:30. He further mentioned that the approval to photocopy the investigation file was given to the Plaintiff's attorney already on 1 April 1991, and that the investigation file was only photocopied on 29 June 1994. From his testimony, it was unclear whether it was clear to him, when taking down the Plaintiff's statement, and whether he positively knew that the Plaintiff had indeed paid a visit to the police on the evening prior to giving his statement, while, according to him, it could have been possible to find out this fact

from the log maintained by the police, but due to the passage of time this log was not found, and had probably been purged.

7. **Conclusions:**

From the aforesaid, it appears that one may conclude that the Plaintiff did indeed visit the police station on the evening of the incident. This fact may be based on the Plaintiff's statement at the police of 9 July 1989, namely the day after the incident, in which he stated that from the scene he proceeded to the police. Under these circumstances, namely that his statement was given in great proximity to the incident, immediately after finding out that his car had been burned down, it appears that his version, whereby he did indeed go to the police already on the evening of the incident, may be accepted; it is difficult to accept a version whereby these statements were "planted" by him in his said statement in order to create the right infrastructure for when he sued the State.

The other question is what was the content of his grievance to the police: if we return to the Plaintiff's statement D/3, he states there as follows: "**on Saturday night…and then there were many religious people there who started throwing stones at me and yelling, I saw that everything was alright with my car but I was afraid of the religious people so I ran away from there, I went to the police and they told me to bring the car to the police station the following day, but I was afraid to go back to the car and said that I would come this morning to the car to get it out of there. This morning at 9:00 I came to the car…**".

It appears that of all the versions before me, this is the "cleanest" one, which can be accepted before it was "processed" or reconstructed, for reasons related to the passage of time or others. Marginally, I should state that the Plaintiff's attorney's statements, whereby inaccuracies may have befallen the Plaintiff's statements in his testimony due to the passage of time, cannot stand to the Plaintiff's credit where he chose to file his complaint so tardily, without any objective reason for the delay in the filing of his complaint. As aforesaid, and as specified above, changes occurred in the Plaintiff's versions at various stages. For instance, in his affidavit D/1 he further stated that already at the time of the incident he learned that his car was damaged in that its windows were smashed and its tires slashed, and that he couldn't get near the car since stones were thrown thereon. This is a version from 22 February 1991. The

Plaintiff repeated this version in the complaint, (Sections 8-9), and in his direct testimony affidavit (Section 6). In his cross examination, however, the Plaintiff changed his version and said that he only learned of the damage that was caused to the windows and the tires of the car, for the first time, on the following day, Sunday morning (lines 20-23, p. 9 of the transcript). The Plaintiff re-affirmed (p. 10, line 9), that his statements in the court were the truth (to the best of his recollection), and with regard to the affidavit D/1 he claimed, as may be recalled, the version: "**I don't know who wrote and how**". Consequently, in view of the inconsistencies in the Plaintiff's versions on such a material point, it is possible, at the most, from the Plaintiff's point of view, to accept his statement at the police as reflecting the truth. These statements indicate, in fact, two things: the one is that the car was intact and in no danger, and the other – that the danger was posed to the Plaintiff's **body**, to his well-being and personal safety. The stones were thrown **at him**, and that is the reason he escaped from the scene. Also the change in his versions indicates that his car, according to **his testimony**, was only damaged after he left the scene, and the fact of the infliction of the damage (window shattering and tire slashing) became known to him only on the following day. Consequently, the Plaintiff could not have alerted the police to a danger which he himself did not foresee or claim, hence the police could not have foreseen the possibility that his car would be set on fire. The message which the Plaintiff relayed to the police when he first turned to it, as appears, as aforesaid, from his statement D/3, was the fear for **his own** safety. His state of mind may be inferred also from his testimony in court, when he said that he agreed with the mechanic and with the tow truck driver to return the following day to tow the car away. Such an agreement testifies that the Plaintiff neither feared nor imagined that there would be nothing to retrieve (see p. 9, lines 1-7 of the transcript).

Therefore, to summarize the aforesaid and as specified above, one cannot avoid the conclusion that when the Plaintiff arrived on the scene, his car was intact and in proper condition, and he did not fear for it but for himself, and therefore sought the assistance of the police. When the Plaintiff turned to the police at the time of the incident **and thereafter**, he did not foresee at all the possibility that his car would be damaged, in one way or another, and was therefore unable to alert the police to such a possibility, which he himself did not foresee. Although it is true that the Plaintiff's

car was ultimately set on fire, this consequence is remote and unrelated in any legal or factual connection to the lack of assistance.

The result is that the complaint is dismissed.

The Plaintiff shall pay the Defendants' [sic] expenses and attorney's fees in the total sum of NIS 12,000.

**The court clerk shall serve a copy on the parties' counsel.**

**Issued today, 13 Kislev 5760, 22 November 1999 in the absence of the parties.**

______________________________
**R. Carmel, Justice**

[ stamp of the court ]

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