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The Magistrates Court in Jerusalem  
Civ. 20074/96  
Ismaail v. The State of Israel  
Opening date: 10 November 1996

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

In the matter of:           **Ismaail**

represented by attorneys Hala Huri and/or Eliahu  
Abram and/or Hisham Shabaita 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 District Attorney of Tel Aviv  
(Civil Department)  
1 Henrietta Szold Street, Tel Aviv

**The Defendant**

Nature of the claim:       **Bodily Injuries**

Amount of the claim:     **NIS 391,500**

### **Complaint**

1. The Plaintiff was born in 1965, and is a resident of the Old 'Askar refugee camp 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 the Old 'Askar refugee camp in the District of Nablus.

### **The Incident**

3. At around noon on 22 November 1989, the Plaintiff was on her way back home in the Old 'Askar refugee camp, together with her son A. who was four years old at the time.

4. Suddenly, the Plaintiff heard people on the street shouting “the army is here”. The Plaintiff turned to see where the voices were coming from, at which point she felt severe pain in her left leg, and saw that her leg was bleeding.
5. After being shot in the leg, the Plaintiff was rushed to the Al-Ittihad hospital in Nablus.
6. The Plaintiff emphasizes that she did nothing, nor took part in any action of any kind which could have provided a cause for firing at her.
7. Despite the IDF’s knowledge of the incident, no investigation was conducted by any military body with regard to the injury to the Plaintiff and, at any rate, she was never informed of the outcome of the investigation, if any was conducted.
8. It should be noted that after the Plaintiff was released from Al-Ittihad hospital in Nablus, she was not summoned for questioning at the police or civil administration, nor was she arrested, nor indicted of any charge.

### **The Soldiers’ Liability**

9. 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. Fired plastic bullets in circumstances that did not justify such use.
  - b. Fired plastic bullets 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 plastic bullets negligently and/or in violation of the regulations on the use of plastic bullets.
  - e. Opened fire while facing no material danger and with no justification or cause to open fire.
  - e. Fired toward the body in the aforementioned circumstances, without verifying that innocent passersby were not injured thereby.
  - f. Fired without permission from the soldier authorized therefor.

- 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.
10. 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**

11. 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.
12. The Defendant is liable for the accident 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 accident in particular.
  - b. Failed to fulfill its lawful duties and/or missions 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 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 or soldiers who carried out 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 or soldiers to shoot unlawfully.
  - k. Acted negligently by allowing the soldier or soldiers to use fire unlawfully.
13. Alternatively, the Plaintiff shall claim that she 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 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 subject to the rule of *Res ipsa loquitur*, and it is the Defendant that has to prove that the accident occurred through no negligence on its part.
14. 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 or soldiers, the Defendant's agents, and the "dangerous instrumentality" rule applies.

15. The Plaintiff does not know the identity and/or names of the soldiers and/or defense personnel who caused the damages, 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**

16. Initially, the Plaintiff was hospitalized at the Al-Ittihad Hospital for a period of 4 days. There, she was diagnosed as suffering from a gunshot to the calf and underwent surgery to debride, and thereafter to close, the wound.
17. Immediately after her release from hospital, a deterioration occurred in the condition of the Plaintiff's left leg, which swelled up terribly. She was therefore re-hospitalized at the Al-Ittihad Hospital from 29 November 1989 until 16 December 1989. During the second hospitalization, the Plaintiff underwent another operation to amputate part of the calf muscles, and her leg was placed in a cast.
18. Following her last release from hospital, the Plaintiff remained confined to her bed for a period of approximately 1.5 months. During the said period, the Plaintiff received ongoing medical treatment and was under medical observation.
19. The Plaintiff underwent rehabilitation at the "Princess Basma" institute in Jerusalem. The Plaintiff had to wear a metal instrument on her left leg, from her foot upward to the knee. The Plaintiff was also forced to wear special shoes due to the amputation of the calf muscles in her left leg. The Plaintiff wore both the said instrument and the special shoes for 6 years. The Plaintiff also received physiotherapy treatments from private doctors.
20. The Plaintiff was examined by the Orthopedist Dr. U. Frenkel, who made the following findings: the Plaintiff walked with a slight limp, she had a scar, approximately 31 cm long, on her left calf, was missing muscle tissue, and had deficient functioning of the rectifiers on her left leg.  
  
Based on the said findings, Dr. Frenkel fixed the Plaintiff's permanent disability rate at 10%. A specification of the Plaintiff's orthopedic disability appears in Dr. Frenkel's opinion of 4 February 1996 (which is attached to this Complaint as Exhibit A and constitutes an integral part hereof).
21. The Plaintiff was further examined by a plastic surgery expert, Prof. D. Meller, who specified, in his opinion of 23 June 1996 (which is attached to this Complaint as

Exhibit B and constitutes an integral part hereof) that the Plaintiff had a visible scar on her calf, which was a disfiguring defect for a 31-year old woman, and fixed the Plaintiff's permanent disability rate at 5%.

22. As a result of the incident and the injury, the Plaintiff suffers from difficulties in walking and in performing household chores which require physical effort.
23. The Plaintiff shall claim that due to her injury and medical disability in the orthopedic field, she has suffered a severe injury to and decline in her work capacity and functioning, in such a manner that at present, and from the date of the accident, the Plaintiff has been unable to continue her work, nor engage in any other occupation.
24. Before the accident, the Plaintiff worked as a self-employed seamstress, and even gave sewing classes at the women's activity center in the Old 'Askar refugee camp. The Plaintiff earned an average of NIS 900 per month, but due to the said incident, the Plaintiff was unable to continue working in her profession. She did try to go back to work in order to mitigate her damages, but to no avail.
25. The Plaintiff shall further claim that her injury, the long and tiresome treatment she received, the painful surgeries she underwent, her difficulties in walking, her inability to wear feminine shoes for many years as aforesaid, and the disfiguring 31-cm long scar that remained on her leg, have caused her severe and unbearable pain and suffering, and that all of the said injuries severely affected the normal course of life she led before the incident.
26. The Plaintiff shall further claim that due to her injuries she required the assistance of others to perform household chores. For the sake of fairness it should be noted that throughout the entire period since the incident to this day, the Plaintiff has been helped by her sister who has been living with her, and by other family members.
27. Following is a specification of the damage suffered by the Plaintiff due to the incident:

**Specific Damage**

a.	Past lost earnings	NIS 80,000
b.	Past medical expenses	NIS 1,500
c.	Past third party assistance	<u>NIS 10,000</u>
	Total specific damage	NIS 91,500

**General Damage**

a.	Pain and suffering	NIS 100,000
b.	Future loss of earnings	<u>NIS 200,000</u>
	Total general damage	NIS 300,000

**Total specific and general damage****NIS 391,500**

28. 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 full payment to the Plaintiff of her damage, as specified in Section 27 above, and to charge the Defendant with payment of trial expenses and V.A.T. as set out in the law, and all in addition to indexation and interest from the date of the incident.

Jerusalem, 10 November 1996

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Hala Huri, Adv.  
Counsel for the Plaintiff

Encl. Opinion of Prof. D. Meller  
Opinion of Dr. U. Frenkel

(T.S. 6698, M.M. 17182)