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At the Jerusalem Magistrate Court

Jerusalem Magistrate Court

A 7498/97

Mustafa v. State of Israel

Filing date: May 21, 1997

Procedure: Ordinary

_____ **Mustafa**

Represented by counsel, Adv. Hisham Shabatiyeh
and/or Eliyahu Avram and/or Hala Huri of HaMoked:
Center for the Defence of the Individual, founded by
Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Plaintiffs

v.

State of Israel

Represented by the Tel Aviv District Attorney's Office
1 Henrietta Szold Street, Tel Aviv
Tel: 03-6970222; Fax: 03-6918541

The Defendant

Nature of Claim: Personal Injury

Amount of Claim: 30,000 ILS

Statement of Claim

1. The plaintiff, born in 1975, is a Jordanian citizen, holder of Jordanian passport No. _____. In the period relevant to facts described in this claim the plaintiff visited Israel as a tourist according to a tourist visa which was issued to him on July 27, 1995.
2. The defendant is and was responsible for the acts of the police officers of the State of Israel during the period relevant to facts described in this claim.
3. On September 10, 1995, early in the morning, the plaintiff joined his cousin and two friends, all three from Beita village located in the Nablus district, on their way to work in Rosh Ha'ayin area (hereinafter: **his friends**).

4. Shortly after they were arrived by taxi to Rosh Ha'ayin city center, three policemen in a Ford Transit police car suddenly stopped near the plaintiff and his friends. The policemen ordered the plaintiff and his friends to enter the police car.
5. Plaintiff's friends entered the car. The plaintiff refused to enter the car while trying to explain to the policemen that he was a Jordanian tourist. However, the menacing shouts of one of the policemen caused the plaintiff to immediately succumb to the demands of the policemen.
6. In the police car the plaintiff took out his passport again in an attempt to convince the policemen that he was a Jordanian tourist. Suddenly, one of the policemen who was sitting in the front seat near the driver (hereinafter: **policeman 1**) hit the plaintiff's right leg with a club. The plaintiff gripped the club to stop the beatings. At this point, policeman 1 and another policeman who was sitting in the back seat (hereinafter: **policeman 2**) attacked the plaintiff and started to beat him with their hands.
7. The policemen beat plaintiff's head vigorously and policeman 1 strongly kicked plaintiff's knee and left eye.
8. Thereafter policeman 1 stopped beating the plaintiff and told policeman 2 to stop as well but policeman 2 did not listen to his friend and continued, for long minutes, to strongly beat the plaintiff, until the policeman got tired and could no longer continue to beat the plaintiff.
9. The policemen who were driving the police car together with the plaintiff and his friends, told them that they intended to take them to the Abu Kabir detention house. About ten minutes later, when they were reached one of the settlements near Azzun village, one of the policemen opened the door and ordered the plaintiff and his friends to quickly leave the area before he counted to three, otherwise he would shoot them.
10. The plaintiff and his friends who were terrified ran to the close-by hill, towards Azzun village, and from there travelled to Beita.
11. The plaintiff filed a complaint, through HaMoked: Center for the Defence of the Individual (HaMoked), with the Policemen Investigation Department at the Ministry of Justice. Following his complaint an investigation was launched.

On October 31, 1995, the plaintiff received the results of the investigation according to which it was decided to close down the file on the grounds of "unknown offender", in view of the fact that the specific policemen suspected of having committed the offense were not located.

Liability of defendant's agents

12. The plaintiff will claim that by beating him all over his body, the policemen, defendant's agents, committed assault as this term is defined in section 23 of the Torts Ordinance [New Version].

Negligence

13. The plaintiff will argue further that the assault committed by the policemen, defendant's agents, amounts, in and of itself, to the tort of negligence.
14. In addition, the plaintiff will argue that the policemen, defendant's agents, were negligent and that their negligence was manifested, inter alia, by their acts and/or omissions as follows:
15. A. They exceeded their authority and acted contrary to the law and/or the orders of the General Commissioner of Israel Police and/or his directives and/or decrees.

- B. They acted carelessly and/or recklessly and/or with disrespect and/or disregard towards plaintiff's bodily integrity and health and contrary to the conduct of reasonable and skilled policemen under similar circumstances.
- C. They failed to take all measures which reasonable policemen should take to prevent or reduce the injury caused to the plaintiff.
- D. They took an inappropriate measure for the purpose of maintaining public order.
- E. They abused their authority by employing against the plaintiff force with no lawful justification and/or with no reasonable reason and/or excessive force.

Breach of Statutory Duties

- 16. The plaintiff will argue that the policemen, defendant's agents, breached statutory duties which are designed, according to their proper construction, to protect the class of persons to which the plaintiff belongs, and in so doing inflicted on the plaintiff the damage allegedly caused to him.
- 17. Particularly, the plaintiff will argue that defendant's agents breached the duties imposed on them by the Penal Law, 5737-177 (hereinafter: the **Law**), the Police Ordinance [New Version], 5731-1971 (hereinafter: the **Ordinance**) and the Basic Law: Human Dignity and Liberty (hereinafter: the **Basic Law**).
- 18. In more detail and without derogating from the generality of the arguments specified above, the plaintiff will argue that the policemen, defendant's agents, breached the following duties:
 - A. Section 280(1) of the Law, according to which a public servant may not abuse of his authority for the purpose of performing an arbitrary act that injures the rights of another person.
 - B. Sections 333, 334 and 335 of the Law according to which the infliction of a grievous harm or wounding another person are prohibited.
 - C. Sections 378, 379, 380 and 382 of the Law, which prohibit assault, assault which causes a substantial harm and assault under aggravated circumstances.
 - D. Section 3 of the Ordinance concerning the duty of every policeman to maintain public order and protect personal security.
 - E. Section 19(a) of the second addendum to the Ordinance concerning the prohibition against the use of force against a person while on duty contrary to police orders or any other lawful directive.
 - F. Section 2 of the Basic Law according to which the infliction of any harm on the body or dignity of a person, as such, is prohibited.

Defendant's Liability

- 19. The plaintiff will argue that the defendant is vicariously liable for the above acts and/or omissions of the policemen, in view of the fact that they are its agents and/or employees and/or act on its behalf.
- 20. In addition, the plaintiff will argue that the defendant is directly liable for the f=damages inflicted on the plaintiff as a result of negligence and/or breach of statutory duty, which are manifested, *inter alia*, in the following acts and/or omissions:

- A. It did not supervise and/or did not properly supervise the acts and omissions of the policemen, its agents, and/or acted carelessly and did not pay attention and/or did not exercise control over the persons under its responsibility.
- B. It failed to guide and/or instruct the policemen not to abuse their authority and not to take an arbitrary action which violates the rights of others including the plaintiff.
- C. It failed to properly guide the policemen and/or to define their duties in the framework of maintaining public order, safety and security.
- D. It failed to clarify to the policemen the provisions of the orders and/or directives of the General Commissioner of the Police and/or inappropriately instructed and supervised the execution of said directives and/or failed to give any directives whatsoever and/or sufficient directives and/or failed to ascertain that persons under its supervision, were familiar with them or followed them.

Plaintiff's damages

- 21. As a result of the acts and/or omissions of the policemen described above, plaintiff's left eye was injured.

In addition to severe bruises in his eye from which he suffered for a few days, the plaintiff suffered eyesight problems and severe pain in the eye area for a long period of time.
- 22. In addition, as aforesaid, the plaintiff was beaten in his head. Consequently he had bruises in different parts of his head, which caused him to suffer from severe headaches for a few days.
- 23. In addition, as aforesaid, the plaintiff was vigorously beaten with a club on his right knee which caused swelling, sensitivity and pain which did not leave him for a long period of time.
- 24. The plaintiff will also argue that in addition to the above damages, the plaintiff was a victim of an extremely severe act of violence for no fault of his own. The policemen had not only injured the plaintiff physically and humiliated him, but also disturbed and disrupted his vacation as a tourist in Israel, and have thus caused him much more grief.
- 25. For all of the above specified damages, the plaintiff claims a global sum of **30,000 ILS**.
- 26. The court is vested with the local and subject matter jurisdiction to adjudicate this claim.
- 27. Therefore, the honorable court is requested to summon the plaintiff to court and obligate it to pay to the plaintiff the sum of 30,000 ILS together with linkage differentials and interest as prescribed by law from the submission date of the claim and until the date of actual payment as well as costs of trial.

Jerusalem, today May 21, 1997

(Signed)

Hisham Shabatiyeh, Advocate
Counsel to the plaintiff

(File No. 8529, 18291)