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[Emblem of the State of Israel]

The Courts

The Magistrates Court in Jerusalem

CC 7646/95

Before the Honorable Justice: Karmi Moseq

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In the matter of:

_____ **Udwan**

represented by attorney M. Pinchuk – HaMoked:
Center for the Defence of the Individual
founded by Dr. Lotte Salzberger
4 Abu Obeidah Street, Jerusalem 97200
Tel. 02-6283555 Fax 02-6276317

The Plaintiff

v.

- 1. The Israel Defence Forces**
- 2. Minister of Defence**

both represented by Y. Almagor - the Tel Aviv District
Attorney's Office (Civil)

The Defendants

Judgment

General:

1. The Plaintiff, a resident of the refugee camp Qalandiya, has filed this claim for damages due to bodily injuries caused to him on 17 May 1988 after a clash with IDF forces.
2. It should be noted that the days in question were the first days of the Intifada, when confrontations with security forces were common and constituted part of the daily routine.
3. In their answer, the Defendants deny the course of events described by the Plaintiff, and it is based on the claim that the Plaintiff's injury was caused due to his attempt to snatch the weapon of one of the soldiers.

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4. I should note that there is no mention in the answer of the existence of a curfew – a fact which accounts for a considerable portion of the Defendants' version of what happened.
5. The Defendants raise various defence arguments, including circumstances which justified the injury to the Plaintiff, and alternative arguments such as contributory fault and voluntary assumption of risk.
6. The Plaintiff filed his claim with the court on the last day before it prescribed, which has caused, according to the Defendants, evidentiary damage, as they were unable to locate the soldiers who were directly involved in the confrontation. According to the Plaintiff, he was unaware of the possibility of filing a claim, until after he was detained at the border crossing in 1993 and was asked to deposit NIS 1,000 as bail. After turning to HaMoked: Center for the Defence of the Individual in order to recover his bail, he learned that he was able to sue for damages.
7. I shall discuss these claims one by one.

The Plaintiff's version:

8. The Plaintiff is claiming in his affidavit that he was detained in his car by a patrol force of six soldiers near the Omar Mosque, and was questioned about being outdoors during a curfew. The Plaintiff replied that he did not know that a curfew had been imposed and that, in any case, being an UNRWA employee, he had a permit to move about also during a curfew. The Plaintiff was asked to call the muezzin so that he would declare the curfew, which he did. Thereafter, the Plaintiff claims, he was asked by the soldiers to throw a gas grenade into his neighbor's house, with the soldiers explaining to him how to operate the grenade. When he refused and placed the grenade down on the ground, the soldiers started beating him up vigorously, while shooting in the air to keep away residents which had gathered nearby, and finally shooting a gas grenade at his waist from a short range.
9. In his examination, the Plaintiff stated that on the day of the incident, his car was parked close to _____ 'Antar's store, which is located close to the Omar Mosque in the camp. At that time, there was only one mosque, namely the camp mosque, which was located at a distance of approximately two kilometers from the Plaintiff's house (p. 5 of the transcript).

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10. The Plaintiff stated that when the soldiers approached him the vehicle was at a standstill, and that he waited in his car until the soldiers arrived (ibid., p. 8). Since it was a holiday (the second day of Id al-Fitr), there were no stone throwings or other events.
11. To the Defendants' attorney's question, the Plaintiff replied that when he was asked to identify himself, he presented his I.D. and an UNRWA employee I.D., and added that there was a general permit for UNRWA employees to move about during curfews (ibid., p. 10).
12. It has further transpired from the Plaintiff's examination that at the next stage, the Plaintiff and the soldiers stood near 'Antar's house under the window of his house; the Plaintiff stood with the wall of the house to his left and facing the soldiers, who stood close to him (ibid., p. 12).
13. In his examination, the Plaintiff stood by his version, whereby he refused one of the soldiers' order to throw an object into the window of the house above him, and that it was this refusal which brought about his beating by the soldiers at first, and then, after they turned him with his face to the wall, the shooting to the right side of his waist (ibid., p. 14-15).
14. The Plaintiff was asked to draw the object which he claims to have received from the soldiers, and that was allegedly a gas grenade (D/4). From this drawing it appears that the object which the Plaintiff was asked to throw did indeed bear a great resemblance to an IDF gas grenade.
15. From a medical document dated 28 June 1988, that was filed by the Plaintiff, it appears that his injury was caused by a gas grenade. The Defendants' attorney did not challenge its content.
16. I should note that to my eyes the Plaintiff's testimony was credible, in the sense that he obviously did everything he could to cooperate with the soldiers at first, when he was asked to identify himself and presented his I.D. and an UNRWA employee I.D., and then when going to call the muezzin and returning. The Plaintiff has also given credible answers to the questions posed by the Defendants' attorney about the possibility of running away from the soldiers, had he wanted to do so (ibid., p. 14-15), and the possibility of snatching the soldier's weapon (ibid., p. 17), while surrounded by six (!) armed soldiers.

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17. The Plaintiff's witnesses: P.W. 2, Mr. _____ Nabhan, was the director of the Qalandiya camp for UNRWA in 1988, and his house is located close to the Omar Mosque. According to him, on the day of the incident, the second day of Id al-Fitr, he heard his wife cry that there was trouble between the Plaintiff and IDF soldiers. He also heard cries and shots outside. When he stepped out of his house he noticed three out of six soldiers hitting the Plaintiff. He then noticed one of the soldiers assembling something on his gun and shooting the Plaintiff at the waist. The witness denied that there were any breaches of the peace, stone throwings or any other irregular events at the place.
18. From this witness' examination it appears that, being an UNRWA official, he drew up a report on the incident, which is located at UNRWA's offices in Ramallah (ibid., p. 22). This report was not submitted.
19. The witness' version in his examination supports the Plaintiff's version, whereby he was beaten up while being outside his car and trying to protect himself (ibid., p. 26). The witness stated that he saw a soldier place "*an object 10 cm long in a metal color*" on the gun (ibid., p. 25); however, the witness confirmed that he stood 25-30 meters away from the scene of the incident (ibid., p. 24, 27).
20. Mrs. _____ Nabhan, P.W. 2's wife, gave her version in an affidavit, being an eyewitness and the first to reach the Plaintiff after he was injured (p. 16 of the transcript). Mrs. Nabhan was not summoned to testify, and pursuant to Regulation 522(c) of the Civil Procedure Regulations, 5744-1984, no evidentiary weight should be given to her affidavit [see, on this matter, also CA 743/89 *Goldwasser et. al. v. Kravitz, Piskei Din* 46 (1) 485 and CA 397/87 *Gil v. Bank Discount Ltd., Piskei Din* 44 (2) 397].
21. P.W. 3, Mr. _____ Shihadha ('Antar), owns a grocery store that is located in the vicinity of the Omar Mosque and is adjacent to his house. On the day of the incident he was at home. The witness stated that he heard the soldiers talking to the Plaintiff, and that they asked him to go and get the muezzin so that he could declare a curfew. After returning, the soldiers asked him to throw a gas grenade into the witness' house. When he refused, the soldiers started beating him up, and then he heard two shots followed by a loud explosion, after which he saw the Plaintiff lying on the ground. The witness has noted that there were no irregular events of breaches of the peace,

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stone throwings, etc. at the place, and that except for his refusal to throw the gas grenade into his house, the Plaintiff obeyed all of the soldiers' instructions.

22. To the Defendants' attorney's question, the witness replied that the Plaintiff's car was parked close to his house. The witness further stated that he did not see the Plaintiff return with the muezzin, but noted that he saw him leaving and returning (ibid., p. 29).
23. The witness has stated that he heard the soldiers' conversation with the Plaintiff, including their instruction to the Plaintiff to throw the gas grenade (ibid., p. 30). According to the witness, the soldier did not place the grenade in the Plaintiff's hands, but held it in his hands during the verbal confrontation (ibid., p. 31).
24. I believe that if the Plaintiff had had the muezzin testify, his testimony could have helped clear the fog surrounding the question of whether a curfew was imposed on the day of the incident. I shall further note that the Plaintiff testified that while he was hospitalized, he filed a complaint to the Red Cross with the representative of the organization who came to him (Ibid., p. 4). A copy of the complaint was not attached, even though it could have indicated to the circumstances of the Plaintiff's injury at the closest time to the time of the event.

The Defendants' version:

25. The existence of evidentiary damage: The Defendants claimed first that the filing of the complaint approximately seven years after the incident had occurred has caused them substantial evidentiary damage, as they were unable to locate the soldiers who were present at the incident.
26. I do not accept this argument since, so long as the legal situation determines that the number of years before the period of limitation commences is seven years, the State should be prepared for the filing of actions such as that of the Plaintiff, namely preserve the evidence that it could use in its defence [see, on this matter, the opinion of the Honorable Justice Moyal in CApp (Afula), 3261/96 *Abu al-Rub et. al. v. The State of Israel*, p. 5, not published].
27. Lieutenant Colonel _____ Avital, DW 1, attached the two operations logs covering the day of the incident to his affidavit.

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28. The witness has stated that events of various types, such as shooting incidents, accidents, terror acts and any extraordinary event, are entered in the operations log (Article 3 of his affidavit).
29. A perusal of the “ordinary events report”, which is the report summarizing the events of the day, reveals that at 09:50 a local’s car was stopped for a routine checkup (this entry is followed by a description of a weapons-snatching attempt, at the end of which the local was shot twice in the abdomen). There is no mention of a curfew in the log.
30. In the second operations log, which is handwritten, there is no mention of a curfew being imposed before 10:00 on the said day (nor thereafter).
31. Thereafter, the specification of events is as follows:

10:05 A local has tried to snatch the weapon of one of the soldiers from the 51st regiment at a roadblock in Qalandiya. The soldier shot at the local. It is unknown whether he was injured or killed. Was kidnapped by locals. A doctor has to perform an examination in hospital.

32. On the left hand side of the report, it is written in different handwriting:

**The injured was brought to hospital... his details:
_____ from Qalandiya R.C. [Refugee Camp], 30 years
old. Gunshot wound... in operating room.**

10:10 Roadblocks erected at ... and at Ramma junction. Declared a closed military area. A Golani patrol stopped a local’s car for a routine checkup. The local who was in the car, about 30 years old, tried to snatch one of the soldiers’ weapon. Another soldier who was at the roadblock fired two shots in the direction of the local.

33. On the left hand side of the report it was added:

_____, UNRWA refugee certificate – no. ____.

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34. In the intelligence log that was brought before me (P/3), there is an entry at 10:01 with a similar description of the incident. This log too contains no documentation of a curfew having been imposed.

35. Lieutenant Colonel Avital confirmed in his examination that there was indeed no documentation of a curfew having been imposed on the day of the incident, (p. 36 of the transcript).

36. Lieutenant Colonel Eli, DW 2, served at the time of the events as deputy commander of the regiment in the Qalandiya refugee camp area.

The Plaintiff's attorney claims that, being hearsay, Lieutenant Colonel Eli's testimony cannot be used as a basis on which to found the Defendant's version, since he was not present at the scene of the incident, but heard about its occurrence on the radio, and his testimony is based on his debriefing of the soldiers in the field.

37. The State's argument is that in view of the long time that had elapsed before the complaint was filed, it cannot locate the soldiers who were involved in the incident, and his testimony constitutes *res gestae* – an exception to the hearsay rule, since it was recorded by the witness' senses from the soldiers who were present at the incident, shortly thereafter, and was uttered by the perpetrator of the act.

38. A statement that accompanies an act and explains the performance thereof can shed light on the act and explain it, and it will be accepted as evidence of the truth of the matters asserted therein, even though the person having made the statement is not a witness and cannot be brought to the stand. Such a statement required the fulfillment of three conditions (Y. Kedmi, Al ha-Re'ayot [On Evidence], Consolidated and Updated Edition, p. 437-438):

- The statement accompanies an act performed by the person making the statement and explains the same;
- The statement was made while the act was performed or in proximity thereto;
- The statement was uttered by the perpetrator of the act.

39. Lieutenant Colonel Eli debriefed the soldiers shortly after the incident, after having heard about its occurrence on the radio, and he heard about the events from them.

40. I confess that it was not wholeheartedly that I agreed to accept Lieutenant Colonel Eli's testimony, especially in light of the fact that he had prepared a report in writing,

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which the Defendants have chosen not to submit (p. 42 of the transcript). However, in view of the fact that the complaint was filed a long time after the incident occurred, I determine that his testimony can be regarded as falling within the *res gestae* exception.

41. In his affidavit, the witness stated that a curfew had been imposed on the day of the incident (Article 8).
42. In Article 11, the witness described the chain of events leading to the Plaintiff's injury. I have chosen to bring this description verbatim:

To the force's soldiers' surprise, the Plaintiff refused to identify himself, and even started arguing with the soldiers. The Plaintiff said that he was from a certain aid organization and that the curfew did not apply to him. An argument developed between the soldiers and the Plaintiff, at the end of which the Plaintiff attacked the soldiers. The commander called the soldiers to help him and asked to ward the Plaintiff off and to "break away" from him, since such a confrontation could have inflamed passions and drawn locals outside. The patrol commander tried to gain control of the Plaintiff, but was unsuccessful. The Plaintiff let go and ran towards another soldier in order to attack him, and the latter shot him from a short range. From him, he continued to another soldier in order to extract his weapon from him, and after a struggle the weapon fell down. The soldiers did not shoot at the Plaintiff at this point because they were afraid of hitting their friends who were standing close to him. After the soldiers' attack, the Plaintiff began escaping and the soldiers ran after him. The soldiers shouted after him to stop ("waqif" in Arabic), fired into the air and then fired at him.

43. In Article 12 of his affidavit, the witness said that "the Plaintiff was injured in the abdomen, was treated in the field and was rushed by army forces to receive medical treatment".

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44. Lieutenant Colonel Eli testified in his examination that the existence of a curfew is reported in the operations log by all operational levels (p. 43 of the transcript), and yet confirmed that there was no documentation in the operations logs that a curfew had been imposed on the day of the incident (ibid., p. 44).
45. Lieutenant Colonel Eli's affidavit was accompanied by a tape recording of the newscast from the day of the incident, which the Defendants claim should be given similar evidentiary weight to that of a picture, it being documentation from a time close to the event, that was made by a third party which is not a party to this litigation.
46. I do not believe that the tape carries considerable evidentiary weight, since it too is based on Lieutenant Colonel Eli's testimony, which is essentially hearsay, and adds no additional information to that specified in his affidavit; it should be emphasized that Lieutenant Colonel Eli was not present at the time of the incident, and his version, as recounted by him in court, is based on the report he received from his soldiers.
47. In this respect, I should note that Lieutenant Colonel Eli testified that the military police investigated the incident, because it involved casualties (p. 42 of the transcript). The Defendant has chosen not to submit this report.

The circumstances of the Plaintiff's injury:

48. The Defendants' attorney pointed in his summations to contradictions found in the witnesses' testimonies, but I have not found them to be material, namely such that can rebut the Plaintiff's version. Furthermore, there is sufficient evidence indicating to the circumstances of the Plaintiff's injury, as I shall specify below.
49. The operations log of Central Command, which was attached to Lieutenant Colonel Avital's affidavit, specifies the main events which took place on 17 May 1988 between the hours of 03:45 and 00:40. This log makes no mention of the incident, following which a curfew was imposed on the refugee camp, according to the Defendants (a local stopping an Israeli car and striking the driver's head with a stone).
50. From the testimonies of Lieutenant Colonel Avital and Lieutenant Colonel Eli, and from the operations logs, it clearly transpires that no curfew was imposed on the day

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the Plaintiff was injured, and therefore the State's claim regarding the breach of the curfew as the initial cause of the soldiers' having turned to the Plaintiff, is unfounded.

51. From the description of the circumstances of the incident given by Lieutenant Colonel Eli, we learned that the Plaintiff was with his back to the soldiers, since they were chasing him, and the obvious conclusion is that the injury should have been to the back part of his body, namely his head, torso, pelvis or legs.
52. Prof. Meller, a plastic surgeon, prepared the opinion on the Plaintiff's case. The Defendants have chosen not to submit an opinion on their behalf. Prof. Meller states in his opinion that the Plaintiff has two scars on his abdomen: the one is vertical, 11.5 cm long, on the central line of the abdomen above the navel; the other is on an area of 2 x 14.5 cm on the right side of the abdomen.
53. These factual findings match the version described by the Plaintiff with regard to the direction of the shooting.
54. I shall further note that the circumstances of the development of the confrontation as alleged by the Defendants are questionable also with regard to the reason for its outbreak, since why would the Plaintiff refuse to identify himself, being a member of the UNRWA organization who is authorized to move about even when a curfew is imposed?!
55. The Plaintiff testified that after he was injured, he remained lain on the floor, and was taken to hospital by his acquaintances (p. 16 of the transcript). This version is supported also by the testimonies of the other witnesses (ibid., p. 25). There is no indication in the operations logs of the Plaintiff having been evacuated by the soldiers (it was written there that his body was kidnapped by locals); this fact too contributes to the validation of the Plaintiff's version, since, had the soldiers injured him in the circumstances described by the Defendants, they would probably have arranged for his evacuation.

The State's liability in tort:

56. Hoq ha-Neziqim ha-Ezrahiyyim (Ahrayut ha-Medina) [Torts Law (State Liability)], 5712-1952, determines the State's liability in tort similarly to that of any other litigant, owing to negligent acts.

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57. The Defendants' conceptual duty may be regarded as comprising the two sides of the scale: the one is the duty of preserving law, order and general security, and the other is the duty of safeguarding the body and property of local residents.
58. The Honorable President Agranat (as was his title then) ruled in CA 751/68 *Ra'id et al. v. the State of Israel, Piskei Din* 25 (1) 195 that the standard of reasonable caution, according to which the conduct of a shooting police officer will be measured, must be applied in consideration of the tension that existed at the time of the riot and the other special circumstances of the case, as distinguished from the application of the said standard to a case in which a person causes an accident while being in a "normal" situation.
59. Based on this precedent, Justice Procaccia ruled in CApp (Jerusalem) 210/93 *the Estate of the Deceased Nasir et al. v. the State of Israel, Taqdin Mehozi* 95(4) 180:

The conceptual duty of caution ranges, therefore, between the unconditional duty of caution not to hurt individuals in times of peace, and a conditional duty in times of crisis, when the limits of such duty in such situations are determined in accordance with the reasonableness of foreseeing the damage in accordance with the circumstances of the case. The more difficult and violent is the crisis, the more limited is the degree of caution required vis-à-vis the individual involved in the crisis, and vice versa. Also under such circumstances, it is necessary that the risk to the individual's safety not exceed the proper and reasonable degree in the factual reality that is unique to the case.

60. Needless to say, the concrete duty of caution is established in this case too.
61. As aforesaid, the factual foundation which the Plaintiff has managed to prove indicates that there was no rioting around the time of his injury, and that his behavior was characterized by no aggression of any kind until the moment he was beaten by the soldiers and tried to defend himself. Furthermore, I will say that the rueful conclusion that arises from the picture that has been drawn before me is that there was no reason for the outbreak of the confrontation between the parties, because the

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Plaintiff's being outdoors involved no breach of curfew, and therefore the reason why the soldiers went up to the Plaintiff in the first place is unclear.

62. Under these circumstances, the soldiers breached the duty of caution owed to the Plaintiff, by using violent means of action without any justification, with regard to both the Plaintiff's conduct and the objective circumstances at the time the incident took place.
63. Since the soldiers are the State's agents, the State is liable for the Plaintiff's damages, insofar as he is able to prove them.
64. The Defendants' attorney claimed in his summations that the behavior of the soldier who attacked the Plaintiff was irregular, extreme and unforeseeable, and therefore imposed no liability on the Defendants.
65. I do not accept this claim, first because we are concerned with six soldiers, who witnessed the occurrence of the incident, and were able to prevent the rueful consequences at its close, and second, because they were perpetrated within the framework of the soldier's duties, albeit while abusing his authorities.
66. In practice, once I have determined that the Plaintiff's injury was the result of the negligence of the soldiers, the Defendants' agents, there is no longer any need to discuss the other arguments. However, and superfluously, I will note with regard to the battery argument that the factual foundation that was established meets the enhanced burden of proof that is imposed on the Plaintiff when attributing to the soldiers criminal actions in a civil trial [see CA 373/89 *Masri v. Helef, Piskei Din* 45 (1) 729, 742, and CA 125/89 *CPA Blass v. Filowsky et al., Piskei Din* 46 (4) 441, 449].
67. The Defendants' attorney claimed in his summations that the Defendants enjoy an immunity, pursuant to Article 25 of the Torts Ordinance, since the Defendants neither allowed nor ratified the soldiers' acts. This claim does not stand in the face of the case law, which determines that once the State has taken a stand as a litigant, whereby the attack should not be deemed as a civil wrong, it is deemed to have ratified the attack and chosen to assert its legality (CA 667/77 *Dadon et al. v. Atias et al., Piskei Din* 32 (2) 169, 174; CApp (Jerusalem) 20965/98 *Juda v. the State of Israel*, not published).

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68. The Defendants' attorney claimed in his summations that since the act was an act of war, the Defendants enjoy a defence under Article 5 of the Torts Law (State Liability), 5712-1952.
69. I do not believe that this defence is established for the Defendants in the case before us; an "act of war" was defined in CA 311,317/59 *Tractor Station Factory Ltd. v. Yoram ben Yosef Hayyat et. al.*, *Piskei Din* 14, 1609, and in later case law, as a genuine act of fighting, namely a military act which the army generally does not perform other than in times of warfare, such as the gathering of forces for battle, belligerent attacks, exchanges of fire, explosions, etc. [CA 311, 317/59, CA 623/83 *Levy et al. v. the State of Israel*, *Piskei Din* 40 (1) 477, 479-480]. Clearly, not one of the foregoing took place in this case [see also CApp (Jerusalem) 82/94 *Panon v. the State of Israel*, *Taqdin Mehózi* 96 (3) 748].
70. The Defendants' attorney raised an alternative defence argument, whereby the soldiers' actions may be classified as policing activities, which are covered by the defences set forth in *Pequddat ha-Mishtara* [Nosah *Hdash*] [the Police Ordinance [New Version]], 5731-1971, and *Hoq ha-Oneshin* [the Penal Law], 5737-1977 (Articles 153-154).
71. The authority of policemen is not absolute, and must pass the test of reasonableness [CA 751/68 *Ra'id et. al. v. the State of Israel*, *Piskei Din* 25 (1) 197]. As I mentioned above, the circumstances of the incident, as they appear from the Plaintiff's version which I accept, did not justify shooting at the Plaintiff, who was not armed, was facing six armed soldiers, and did not express any resistance.
72. I am not convinced that the Defendant has lifted the burden of proving contributory negligence on the Plaintiff's part, since his conduct, as alleged by the Defendants' attorney in his summations, was not proven. The same applies to the facts raised with regard to contributory fault, which were not proven (breach of curfew; arguing with IDF soldiers; disregarding the knowledge that the soldiers' entry into the camp testified to antecedent breaches of the peace; disregarding the belligerent situation around his house; attacking an IDF soldier while fulfilling his duties; an attempt to snatch a weapon from an IDF soldier while fulfilling his duties).

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73. As for the claim of voluntary assumption of risk, it was not proven to me that the Plaintiff could have foreseen the circumstances of his injury in his acts, since his alleged acts were not proven by the State.
74. The Plaintiff's attorney claims in her summations that the circumstances of the case transfer the burden of persuasion to the Defendants on two grounds:
- a. *Res ipsa loquitur* [the thing speaks for itself]: One of the three cumulative conditions for the proof of this claim was not fulfilled, namely that the Plaintiff had no knowledge of the events.
 - b. "The dangerous object": In view of current case law, this argument too is unfounded, since it requires the leaving or delivery of the dangerous object to another, and the causing of damage through the use thereof by the other [CA 81/62 *Fischman v. the Attorney General, Piskei Din* 17 (3) 1478]. These were not the circumstances in the case before us.

The Plaintiff's damages:

75. The Plaintiff's attorney refrained from addressing the issue of damage in her summations, and made reference to the complaint, that was limited to the sum of NIS 50,000 as of the date of filing of the complaint (17 May 1995), the current value of which is NIS 85,455, and does not specify all of the damage counts that are customary in claims for bodily injuries. I shall note that the Defendants' attorney referred to this in his summations, and that the Plaintiff's attorney preferred not to respond thereto in the responding summations which she filed (see Article 19 of the amended complaint).
76. The Plaintiff submitted, on his behalf, the opinion of Prof. Meller, which determines that the Plaintiff was left with a permanent disability of 10%, due to the remaining aesthetic impairment.
77. As is known, the damages included in the definition of "special damage" require proof.
78. Past loss of earnings: The Plaintiff has presented no evidence proving his earning level, and I have therefore not deemed to adjudicate any sum on this damage count for the past.

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79. Past medical and travel expenses: The Plaintiff has presented no evidence on his behalf, but in light of the fact that his injury involved hospitalization and a lengthy recovery period, according to the expert, who was not summoned for examination, I am granting him the global sum of NIS 1,000.
80. Pain and suffering: In view of the Plaintiff's injury, the period of recovery therefrom, including the 43 days of hospitalization, and the fact that it left him permanently disabled, and considering the lamentable circumstances of his injury, I am granting him the total sum of NIS 80,000.

Conclusion:

81. It is my ruling that the Defendants are liable for the Plaintiff's injury due to the negligent actions of others on their behalf, which amount even to battery, as they do not fall under the criterion of reasonableness considering the objective conditions that existed and the Plaintiff's conduct.
82. In accordance with the evidence brought before me, the Plaintiff's damages amount to NIS 81,000 plus attorney's fees at the rate of 20%, plus VAT. These amounts will bear interest and differences of indexation from today until the date of actual payment in full.

Issued today, 14 Av 5760, 15 August 2000 in the absence of the parties.

The office of the court clerk shall send a copy to the parties' attorneys.

Publishable from 15 August 2000.

[Stamp of the Magistrates Court in Jerusalem]

Justice Karmi Moseq