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The Magistrates Court in Jerusalem

Civ. 1945/98

Taha v. Abraham

Opening date: 22 January 1998

Procedure: Ordinary

**At the Magistrates Court in Jerusalem**

In the matter of:

1. \_\_\_\_\_ **Taha**
2. \_\_\_\_\_ **Taha**

both 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 Plaintiffs**

v.

1. \_\_\_\_\_ **Abraham**
2. \_\_\_\_\_ **Halabi**
3. \_\_\_\_\_ **Say'ad**

whose address for service of process is  
Israel Police, National Headquarters  
Jerusalem 91906

4. **The State of Israel**

all represented by Tel Aviv District Attorney's Office  
1 Henrietta Szold St., Tel Aviv 64924  
Tel. 03-6970222; Fax 03-6918541

**The Defendants**

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

Amount of the claim: **NIS 130,000**

**Complaint**

1. Plaintiff 1 was born in 1937 and is a resident of the village Sarda in the District of Ramallah.

2. Plaintiff 2 was born in 1956 and is a resident of the village Sarda in the District of Ramallah, and Plaintiff 1's son. Plaintiff 2 lives with his family in a separate house close to the Plaintiff 1's house.
3. Defendants 1-3 served, at the timeframe relevant to the Complaint, as policemen in the Border Guard of the Israel Police. In the timeframe relevant to the facts of the Complaint, the Defendants served together with other Border Guard policemen and/or other security forces personnel in the Border Guard's Undercover ("*Mistaarevim*") Unit (hereinafter: the Defendants).
4. Defendant 4 was, throughout the timeframe relevant to the Complaint, in charge of the actions and/or derelictions of Defendants 1-3 and/or of other security forces personnel who operated in the area (hereinafter: the Defendant).
5. On the night between 3 and 4 March 1991, close to midnight, when Plaintiff 1 was at home with her son H. (hereinafter: the Son), she suddenly heard cries coming from the house of her neighbors, the B. Z. family (hereinafter: the House), as well as cries of "help, help, thieves in the Z. house!"  
  
Plaintiff 1 and the Son quickly left the house and ran in the direction from which the cries were coming.
6. At the same time, Plaintiff 2 too left his house, having heard the loud cries, and ran towards the House, which is located several hundred meters away from his house. When Plaintiff 2 arrived 30-40 meters away from the House, he came across three armed men in civilian dress, whom he subsequently learned to be the Defendants. The Defendants shone bright lights in Plaintiff 2's face.
7. Plaintiff 2, fearful, turned and ran back. The Defendants chased Plaintiff 2. Approximately 100 meters later, Plaintiff 2 fell down. The Defendants, three altogether, fell upon Plaintiff 2 and beat him up with their hands, with kicks and with the butts of their rifles all over his body, including the head. It was only then that Plaintiff 2 guessed that they were not thieves, as he had first thought, but the Undercover Unit of the security forces.
8. In addition, Defendant 2 sprayed tear gas straight into Plaintiff 2's face. Shortly thereafter, Plaintiff 2's consciousness was impaired. Nevertheless, Plaintiff 2 felt that his neighbor A. T. (hereinafter: the Neighbor) and his mother had already arrived on the scene and were close by.

9. Plaintiff 1, who was as aforesaid also on her way to the House, noticed his son lying on the ground close to the Neighbor, both wounded and bleeding badly from the face and the head.

Plaintiff 1, who was extremely anxious for the fate of her son, who appeared, as aforesaid, to be unconscious, injured and battered, began crying and shouting “my son, my son”, while kneeling down in an attempt to embrace her wounded son and shield him with her arms.

10. Suddenly, one of the Defendants hit Plaintiff 1 on her head with the butt of his rifle. Defendant 2 pulled Plaintiff 1 up by her hair, lifted her and kicked her in the abdomen. Defendant 2 then sprayed tear gas into the Plaintiff 1’s face. At this point, Plaintiff 1’s consciousness was impaired. She fell on the ground and lay there for approximately half an hour, wounded and suffering from severe difficulties breathing.

11. Approximately 30 minutes later, as aforesaid, Plaintiff 1 was rushed to the hospital in Ramallah, and was thereafter transferred to the “Saint John” Eye Hospital in East Jerusalem.

Plaintiff 2 was taken into custody in the tents near the former Civil Administration building in Ramallah. It should be noted that despite the fact that the Plaintiff 2 was clearly wounded and battered, and despite his numerous and explicit complaints on his physical condition, he received no medical treatment. Plaintiff 2 was released from custody only on 16 September 1991, approximately six months after the incident.

12. On 12 March 1991, the Plaintiffs filed a complaint with the Military Advocate of Central Command via the Center for the Defence of the Individual. In a letter dated 2 November 1992, the Director of the Department for Investigation of Police Misconduct – to whose care the Plaintiffs’ complaint was referred – announced that a decision was made to close the case for lack of sufficient evidence, while adding that **“it was not possible to ascertain the specific identity of the policemen who acted as allegedly claimed by the complainants”**.

### **The Burden of Proof:**

13. Already at this point, the Plaintiffs shall claim that a substantial part of the damage that was caused to them in the incident described above, was caused by a dangerous instrumentality and/or an escaping object which can cause damage upon escaping,

which was owned and/or controlled by the Defendant and/or any of its agents and/or any of its policemen and/or any of its employees and/or any other on its behalf.

14. The Plaintiffs shall therefore claim that the burden of proving that no negligence occurred with regard to the dangerous or escaping instrumentality, for which they should be liable, lies with the Defendants.

**The Liability of Defendants 1-3 and/or of the Other Security Forces Personnel (hereinafter: the Defendants)**

**Battery**

15. The Plaintiffs shall claim that the beating they received all over their bodies by the Defendants constitutes Battery, within the meaning of this term in Section 23 of the Torts Ordinance [New Version], 5728-1968.

**Negligence**

16. The Plaintiffs shall further claim that the battery committed by the Defendants constitutes, in itself, the civil wrong of negligence.
17. In addition, the Plaintiffs shall claim that the Defendants were negligent, and that their negligence was expressed, *inter alia*, in the following acts and/or derelictions, namely that they:
  - a. Exceeded their authority and acted against the law and the orders and/or instructions and/or directives of the Inspector General of Police and/or the Border Guard Commander and/or the directives of the general staff of the IDF.
  - b. Behaved incautiously and/or recklessly and/or contemptuously and/or apathetically towards the integrity of the Plaintiffs' body and their health, and contrary to the conduct of reasonable and skilled policemen and/or security forces personnel under similar circumstances.
  - c. Failed to do everything within the power of reasonable policemen and/or security forces personnel to prevent or mitigate the injury to the Plaintiffs.
  - d. Used wrongful measures to maintain public order.
  - e. Abused their authority by taking the law into their own hands and using force against the Plaintiffs without any lawful justification and/or reasonable cause and/or to an excessive degree.

**Negligence Per Se**

18. The Plaintiffs shall further claim that the Defendants were negligent per se by violating statutory duties which are designed, according to the rightful meaning thereof, to protect the type of persons to which the Plaintiffs belong, thus causing the damage claimed by the Plaintiffs.
19. In particular, the Plaintiffs shall claim that the Defendants violated the duties set forth in the Penal Law, 5737-1977 (hereinafter: the Law) and in the Police Ordinance [New Version], 5731-1971 (hereinafter: the Ordinance).
20. For the sake of further specification, and without derogating from the generality of the aforesaid, the Plaintiffs shall claim that the Defendants violated the following duties:
  - a. Section 280(1) of the Law, which prohibits civil servants from abusing their authority to perform an arbitrary act which infringes the right of another.
  - b. Sections 333, 334 and 335 of the Law, which prohibit the infliction of serious injury and battery, and Section 335(2) when two or more join together in the perpetration of the battery.
  - c. Sections 378, 379, 380 and 382 of the Law, which concern simple battery, battery causing serious bodily injury and aggravated battery.
  - d. Section 341 of the Law, which prohibits the unlawful performance of an act or failure to perform a mandatory act, as a result of which a person is injured.
  - e. Section 3 of the Ordinance regarding the duties of all policemen in maintaining public order and personal safety.
  - f. Section 19(a) of the Second Schedule to the Ordinance, which prohibits the use of force against a person as part of the fulfillment of a duty, contrary to the Police Orders or any other lawful instruction.

#### **Defendant 4's Liability**

21. If any act or dereliction constituting the negligence that caused the accident were performed or caused by any other person who acted in the name of Defendant 4 and/or in its service and/or on its behalf and/or as its agent, then Defendant 4 bears vicarious liability for the results of the accident and for payment of the damage suffered by the Plaintiffs.
22. The Plaintiffs shall further claim that Defendant 4 bears direct liability for the damage caused to the Plaintiffs due to negligence and/or lack of caution and/or

negligence per se, as expressed, *inter alia*, in the following acts and/or derelictions, namely that it:

- a. Failed to fulfill its lawful duties and/or missions, and to ensure the safety of the residents of the state, including the Plaintiff [sic].
- b. Failed to supervise and/or to properly supervise the acts and omissions of the Defendants, its agents, and/or acted incautiously and failed to pay attention to and/or watch over the persons under its charge.
- c. Failed to instruct and/or direct the Defendants not to abuse their authority and not to commit an arbitrary act violating the right of others, including the Plaintiffs.
- d. Failed to instruct and/or define for its agents their duty of maintaining public order, health and safety.
- e. Failed to clarify to the Defendants the instructions and/or orders and/or guidelines of the Inspector General of Police and/or the Border Guard Commander and/or the directives of the general staff of the IDF and/or improperly supervised and taught the said orders and/or gave no and/or insufficient safety instructions and/or failed to ensure that persons dedicated to the instruction thereof, were familiar with or observed the same.
- f. Failed to do everything within its power and/or everything it should and/or ought to have done and/or was required to do in order to prevent the battery 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.
- g. Was negligent and/or acted incautiously and/or recklessly and/or while applying erroneous discretion in the planning and/or execution of the operation and/or was negligent in the training of professional and/or skilled men for the planning and/or execution of the operation and/or was negligent in supervising and/or watching over the said men.

#### **The Plaintiffs' Damage**

23. As a result of the Defendants' acts and/or derelictions, Plaintiff 1 suffered injuries to and severe burns on the face. In addition, particularly as a result of the spraying of tear gas directly and from a very short range at Plaintiff 1's face, Plaintiff 1's eyes were hurt and burned. Consequently, Plaintiff 1 suffered from internal hemorrhaging and skin inflammations around the eyes in general and the eyelids in particular.

24. For approximately one week, Plaintiff 1's vision was severely impaired, and she suffered from burning and pain in and around the eyes. In addition, Plaintiff 1 suffered from pain and burning all over her face. As a result of the beating on her head, Plaintiff 1's left ear was hurt, and she suffered from severe pain in this ear for many months.
25. In addition, Plaintiff 1 suffered from severe injuries all over her body. In particular, the Plaintiff 1 suffered from pain around the chest, the pelvis and the abdomen. Particular mention is made of the hemorrhaging and injuries that Plaintiff 1 suffered in the knees.
26. It should be noted that already at the time of the incident, Plaintiff 1 was an elderly woman (of around 55 years of age), and such an injury to her body and soul was all the more severe. Plaintiff 1, whose sole "crime" amounted to her attempt to embrace her son who was lying, as aforesaid, injured and battered, was shocked by the particularly violent style of the Defendants, which caused Plaintiff 1, in addition to the physical suffering as described above, also great distress and emotional suffering. Medical certificates from the hospital in Ramallah and from Saint John Hospital are attached to this Complaint as **Exhibits A and B** and constitute an integral part hereof.
27. As a result of the incident and for approximately one month, Plaintiff 1 received various treatments, and particularly an injection to strengthen the bones, at Ramallah hospital.
28. In addition, as a result of the incident, Plaintiff 1 suffered from nausea for approximately two months, and took anti-nausea drugs throughout this period of time.
29. Due to all of the foregoing damage, which includes specific and general damage, Plaintiff 1 is fixing her claim in the sum total of NIS 80,000.
30. As a result of the Defendants' acts and/or derelictions, Plaintiff 2 was injured all over his body. In addition, Plaintiff 2 too was sprayed with tear gas and suffered from burns and wounds on his face for approximately one week.  
  
Despite the aforesaid, Plaintiff 2 never received any medical treatment, and was taken, as aforesaid, directly to custody in the tents near the former Civil Administration [building] in Ramallah.
31. Plaintiff 2 was unable to walk for approximately 12 days. During this time, he was supported by other detainees, and he suffered from severe pain all over his body,

particularly the chest. Also thereafter, Plaintiff 2 suffered from pain in various parts of his body for about two weeks.

32. It should be noted that Plaintiff 2 was beaten without reason, when he went, as aforesaid, to help his neighbors, neither knowing nor being able to know, prior to his attack, that the men concerned were security forces personnel in disguise. The course of events and the great injustice that were caused to Plaintiff 2, during and after the incident, without any justification, caused Plaintiff 2 great distress and emotional suffering.
33. For this damage, Plaintiff 2 is fixing his claim in the sum total of NIS 50,000.
34. 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 an act or dereliction or where an argument is made with reference to the burden of proof or the dereliction, such argument is made against the Defendants jointly and severally and against their respective employees, representatives and agents, all as prescribed by the context.
35. The Honorable Court has the territorial and the subject matter jurisdiction to hear the Complaint.
36. The Honorable Court is therefore moved to summon the Defendants and to charge them with payment to the Plaintiffs, jointly and severally, of their damage in full as specified above and/or according to any other specification as the Court shall deem right and just under the circumstances, and to charge the Defendants with payment of trial expenses, and all in addition to differences of indexation and interest as set out in the law from the date of the incident until the date of actual payment.

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Hisham Shabaita, Adv.  
Counsel for the Plaintiff

Jerusalem, 20 January 1998



Encl: Exhibits A and B: Medical Certificates

(T.S. 1977, M.M. 19932)