

Translation Disclaimer: The English language text below is not an official translation and is provided for information purposes only. The original text of this document is in the Hebrew language. In the event of any discrepancies between the English translation and the Hebrew original, the Hebrew original shall prevail. Whilst every effort has been made to provide an accurate translation we are not liable for the proper and complete translation of the Hebrew original and we do not accept any liability for the use of, or reliance on, the English translation or for any errors or misunderstandings that may derive from the translation.

**At the Magistrates Court in Jerusalem**

**CC 5418/04**

In the matter of:

\_\_\_\_\_ **Al-Khatib**  
**by his father and natural guardian** \_\_\_\_\_ **Al-Khatib**  
from Al Fawwar, Hebron

represented by attorneys M. Qufti and/or G. Sabah  
and/or S. 'Awnullah  
18 Al-Zahra Street, PO Box 20460, Jerusalem  
Tel. 6276668/9; Fax 02-6284687

**The Plaintiff**

v.

- 1. The State of Israel**
- 2. Israel Defense Forces**

**The Defendants**

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

## **Complaint**

### **1. The parties**

- 1.1 The Plaintiff was born on 5 October 1987, a minor who lives in the Fawwar refugee camp, Hebron District.
- 1.2 In this claim, the Plaintiff is represented by the aforesaid attorney, whose address for the service of court documents is as mentioned above.
- 1.3 Defendant 1, the State of Israel (hereinafter: the Defendant) is and was at all times relevant herein responsible and/or the operator and/or the entity in charge of Defendant 2 and/or all the actions of Border Police officers and/or IDF soldiers and/or regular Police officers both within the borders of the State of Israel and in the Occupied Territories, including the territories that were transferred to the Palestinian Authority, including the scene of the accident described below.
- 1.4 Defendant 2 is and was at all times relevant to this claim an entity and/or agent and/or long arm of the Defendant in all matters relating to the civil and/or security and/or other manner of administration of the Occupied Territories, including the territory

that was transferred to the Palestinian Authority, including the scene of the accident described below.

- 1.5 The Defendants and/or any one of them, in carrying out their functions as described above, stationed and/or placed at all times relevant to the claim security forces and/or land forces and/or Border Police officers and/or soldiers and/or regular Police officers throughout the Occupied Territories, including the territory that was transferred to the Palestinian Authority, including Hebron District, in which the accident described below took place.
- 1.6 Every contention set forth in this statement of claim that relates to the said security forces and/or Border Police officers and/or soldiers refers also to the Defendants, jointly and severally, pursuant to the laws of agency and/or pursuant to employer-employee relations and/or pursuant to the permission given by the Defendants for the acts of the said security forces and/or pursuant to their authorization of those acts.

## **2. The incident**

- 2.1 On 9 October 2001, at 11:30 or thereabouts, during a gym class in the schoolyard of the elementary school for boys in the Fawwar Camp, Hebron District, which is located near the main road, the Plaintiff was suddenly shot in the chest and seriously wounded.
- 2.2 Immediately thereafter, the Plaintiff was taken by school teachers to al-Mizan Hospital, in Hebron, where he remained hospitalized for a whole month, until 9 November 2001.
- 2.3 The said incident will be referred to below as the Accident.
- 2.4 On 18 November 2001, the Plaintiff was again hospitalized as a result of the Accident, this time at a Hospital in Jordan for three weeks, where he underwent a chest operation. On 7 May 2003, he underwent another operation, this time in France. The complicated surgery was performed on his left limb, which was necessitated by the damage to the radial nerve and the resultant complete paralysis. Medical documents are attached hereto.

## **3. Summary of the Plaintiff's medical condition**

- 3.1 The Plaintiff suffers from severe injury to his chest and left lung and from total paralysis of his left limb.

3.2 According to the certification given by a medical committee of the Palestinian Authority, of 13 June 2002, the Plaintiff has a permanent disability of 60 percent. A copy of the committee's certification is attached hereto.

3.3 The Plaintiff reserves the right to submit a medical opinion to prove his damages.

#### **4. Burden of proof**

4.1 Eyewitnesses stated that they saw, at the time of the Accident, IDF soldiers at the checkpoint on the main road at the entrance to the camp aim their rifles at the school, and that they then heard one shot only. When one considers the location of the soldiers vis-à-vis the school, the short distance between them, the fact that only one shot was fired, and that no unusual incidents were taking place in the camp at the time, the probability is that the Plaintiff was injured by the negligent gunfire of [one of] the soldiers.

4.2 The Plaintiff will further argue that he did not know and/or could not have known the precise circumstances that led to the Accident and/or caused his damages, and that his damages were caused by property and/or an object of which the Defendants and/or one of them and/or a person acting on their behalf had complete control, and that it is easier to reconcile the occurrence of the Accident with the conclusion that the Defendants and/or one of them and/or a person on their behalf did not take reasonable caution, than with the opposite conclusion.

4.3 Therefore, the Plaintiff will argue that the Defendants should bear the burden of proof and/or the burden of persuasion, and thus be required to prove and/or show that they were not negligent in this matter so as to make them liable for it.

4.4 In addition, the Plaintiff will argue that the damage he suffered as a result of the Accident was caused by a dangerous instrumentality and/or an object that was ejected and could cause injury upon ejection, and was in the ownership and/or control of the Defendants and/or one of them and/or one of their agents and/or one of their Police officers and/or one of their employees, and/or a person on their behalf.

4.5 Therefore, the Plaintiff will argue that the Defendants have the burden to show that there was no negligence in regard to the dangerous or the ejected instrumentality so as to make them liable.

#### **5. Responsibility of the soldiers and/or the security forces**

5.1 The Plaintiff will argue that the Accident and the injuries he suffered resulted from the negligence and/or lack of caution and/or rashness and/or irresponsibility and/or breach of statutory duties on the part of the soldiers and/or Border Police officers

and/or regular Police officers and/or other security forces, who fired the shot that caused the Accident, which are reflected in the following acts and/or omissions, cumulatively, in complement, and/or alternatively:

- 5.1.1 Fired live ammunition and/or rubber bullets in a situation that did not justify their use and/or without knowing the target and/or without verifying the target and/or in an uncontrolled manner.
- 5.1.2 Fired in a residential area and/or nearby a school, endangering the persons present there.
- 5.1.3 Played with their weapons and/or discharged one shot by mistake and/or fired one shot without reason and without considering the situation, endangering human life.
- 5.1.4 Opened fire at close range and/or at a range that endangers human life and/or in violation of the open-fire regulations and/or without reasonable justification under the circumstances.
- 5.1.5 Fired live ammunition and/or rubber bullets negligently and/or in violation of the rules for using live ammunition.
- 5.1.6 Opened fire where they there was no actual danger to them and/or to their lives, and there was no justification or reason to fire.
- 5.1.7 Opened fire without obtaining permission from a police officer and/or commander authorized to give such an order.
- 5.1.8 Acted in violation of the orders of the supreme military command and/or in violation of the orders of National Police Headquarters and/or in violation of standing orders of the Police and/or the Border Police and/or in violation of regional command orders and/or sectional command orders of the IDF and/or in violation of the open-fire regulations and/or in violation of orders given them in accordance with the law and/or in violation of the statutory acts intended to protect the body and health of persons such as the Plaintiff.
- 5.1.9 Failed to do everything within the realm of possibility and/or capability of a reasonable soldier and/or Police officer to prevent the shooting.
- 5.1.10 Did not act as a reasonable soldier and/or Police officer should have acted in the circumstances.

## **6. The Defendants' responsibility**

- 6.1 The Defendants bear a vicarious liability for the negligence of the soldiers and/or Border Police officers and/or any one of them and/or regular Police officer and/or security forces who did the shooting, in that they were the agents of and/or acted on behalf of the Defendants.
- 6.2 It is right and proper to dismiss summarily the Defendants' contention that they should be exempted from responsibility because the matter herein was a "combat action" within the definition of the term in Hoq ha-Neziqin ha-Ezrahiyyim (Ahrayut ha-Medina) [Torts Law (State Liability)], 5712 – 1952. In fact, the gunfire took place during an ordinary "police" action of the army during which the soldiers' lives were not in danger. An action of this kind creates ordinary risk that is covered in the Torts Law, unlike a "combat" action, which creates a special risk, which is not covered in the Torts Law, as explained by President Barak in the principal judgment on this point: CA 5964/92, *Jamal Qasim Bani 'Uda v. The State of Israel*, *Pisque Din* 56 (4) 1.
- 6.3 The Plaintiff will further argue that the Defendants are personally responsible for the Accident and the damages resulting from the negligence and/or lack of [caution] and/or breach of statutory duty, which are reflected in the following acts and/or omissions, cumulatively, in complement, and/or alternatively:
- 6.3.1 Failed to supervise and/or properly supervise all the acts and/or omissions of Border Police officers and/or IDF soldiers in the Occupied Territories (as they were described at the time), in general, and in the area in which the Accident took place, in particular.
- 6.3.2 Failed to carry out their duties and/or objectives as set forth in law to safeguard the residents of the Occupied Territories, in general, and the Plaintiff, in particular.
- 6.3.3 Failed to anticipate, although they should have done so, the Accident and/or the string of events that led to the Accident and/or anticipate the Accident and/or the string of events that led to it, and despite this, did nothing and/or took insufficient action to prevent the Accident and/or the injury and/or act to reduce the injury.
- 6.3.4 Sent untrained forces and/or improper command staff to carry out police actions and/or to handle disturbances, if such occurred.
- 6.3.5 Failed to explain the open-fire regulations, in particular the regulations on the use of live fire and/or rubber bullets, to the police officer(s) and/or soldier(s).

- 6.3.6 Failed to explain the use of live ammunition and/or rubber bullets, in particular as they regard to shooting at close range and regarding aiming the weapons, to the police officer(s) and/or soldier(s).
- 6.3.7 Failed to ensure and/or instruct and/or supervise compliance with the regulations for opening fire and/or the use of live ammunition and/or rubber bullets and/or failed to provide proper supervision and instruction on the regulations for opening and using live ammunition and/or rubber bullets and/or failed to give any, or gave insufficient, safety regulations and/or did not make certain that the persons under their charge, in particular the soldiers and or police officers who did the shooting, knew and acted pursuant to the said regulations.
- 6.3.8 Failed to do everything they could and/or should have done and/or everything that was correct and/or was necessary to do to prevent the Accident and the resulting injury and/or acted irresponsibly and without due caution and failed to take notice and/or supervise the persons under their charge.
- 6.3.9 Failed to act as a responsible, cautious, and intelligent person and/or authority would act in the relevant circumstances in order to prevent the Accident from occurring.
- 6.3.10 Acted in breach of the rules of safety and breached their statutory duties.
- 6.3.11 Acted negligently by permitting the soldiers and/or police officers who did the shooting to fire in violation of law.
- 6.3.12 Acted negligently by permitting the soldiers and/or police officers who used live ammunition and/or rubber bullets to do so in violation of law.

**7. The Plaintiff's damages**

- 7.1 The Plaintiff remains, as mentioned above, with a high degree of permanent disability as a result of injury to his chest, lung, and left limb.
- 7.2 The Plaintiff suffers and will continue to suffer from constant pain and will require medical, medicamental and even psychological treatments for his entire life.
- 7.3 On the eve of the Accident, the Plaintiff was a healthy child. Now, following the Accident, he is unable to use his left hand, and will be unable to work and gain a living in the future.

- 7.4 Following the Accident and as a result thereof, the Plaintiff has required the aid of his family, which assisted him for an extensive period of time, 24 hours a day. To a large degree, the Plaintiff will require assistance of this kind in the future as well.
- 7.5 The Plaintiff will argue that, taking into account his age, the nature of his injury, his loss of earning capability in the future should be based on a functional disability of 100 percent.
- 7.6 The following are the past and future damages of the Plaintiff resulting from the Accident, for which he is entitled to be compensated, and which he demands, from the Defendants:

Special damages

a.	Past medical treatment and travel	NIS 200,000
b.	Assistance provided by others	NIS 150,000
c.	Father's loss of earnings	<u>NIS 100,000</u>
	Total special damages	NIS 450,000

General damages

- |    |   |
|----|---|
| a. | Loss of earning capacity and/or work capability and/or future pension of the Plaintiff                  |
| b. | Future assistance provided by others  |
| c. | Medical, psychological, and rehabilitative treatment  |
| d. | Travel and other medical expenses   |
| e. | Medical accessories and devices according to the Plaintiff's needs                                      |
| f. | Pain and suffering and loss of enjoyment  |
| g. | Conformation of residential dwelling to meet the Plaintiff's special needs                              |
| h. | Expenses for a special transport vehicle and/or car that is altered to meet the Plaintiff's limitations |
- 7.7 All the contentions set forth in this complaint are cumulative or made alternatively or are complementary, as the case may be, and depending on their context. Where the complaint refers to an act or omission or a contention is made regarding the burden of proof of an act or omission, the contention is alleged against the Defendants jointly and severally and against their employees, representatives, and agents, respectively, all according the context.

