

לא נצרכה אלא לפחת נבילה –

It was not necessary; except for the devaluation of the carcass

Overview

בעלים asserted that the פסוק of פחת נבילה which teaches us that the ניזק is responsible for any deterioration of the value of the נבילה from the moment of death until the העמדה בדין. The מוֹזֵק pays him based on the value of the נבילה at the time of death, not at the time of העמדה בדין². Our תוספות will resolve an apparent contradiction to our ruling here.

anticipate a difficulty:

אף על גב דבפרק המניח (לקמן לד, א) אמרינן כיחשה כשעת העמדה בדין –

Even though that in פרק המניח the rules that if the animal became weaker after the goring, we view the value of the gored animal as it is at the time when the case is adjudicated. The מוֹזֵק must pay the difference between the value of the animal immediately preceding the goring and its value now³. בשעת העמדה בדין. The reason for this explains רב אשי is -

משום דקרנא דתורא קבירא ביה –

because the horn of the goring ox is imbedded in the gored ox⁴. It is evident from that גמרא that the decreased value of the ox after the goring is the loss of the מוֹזֵק. Our גמרא states that the פחת נבילה is the loss of the ניזק.

responds and explains the difference between the two cases:

התם משום דלא מתה ויש לו להמתין עד שתתרפא אבל הכא מיד היה לו למוכרה:

There in פרק המניח, the ניזק does not suffer the פחת since the animal did not die, and therefore it is proper for the ניזק to wait (and not sell the animal immediately) until it can be determined whether she will heal.⁵ However here where the animal died (we are discussing פחת נבילה), the ניזק should have sold the animal immediately (for ordinarily the value of the carcass will continue to decrease with time). Therefore the ניזק suffers the פחת נבילה.

Summary

¹ The rule of בעלים מטפלים בנבילה could be derived from ישיב לרבות אפילו סובין.

² If the live animal was worth \$100 immediately before the goring, and the carcass was worth \$40 immediately after the goring, and it was worth \$30 at the העמדה בדין (it lost \$10 in value), the מוֹזֵק pays him \$60 (100- 40); not \$70 (100-30).

³ The מוֹזֵק must suffer the loss of the decreased value of the gored ox from the time it was gored until העמדה בדין.

⁴ It is the initial goring by the ox that is causing the ניזק to deteriorate (it is as if he is constantly goring).

⁵ The ניזק was within his rights not to sell the animal. The decrease in its value is due to the קרנא דתורא of the מוֹזֵק which was קבירא ביה.

By נזקין the פחת הניזק is the liability of the מזיק; by פחת נבילה it is the liability of the ניזק.

Thinking it over

1. If we assume that קרנא דתורא קבירא ביה obligates the מזיק for the פחת of the ניזק, then it should obligate him for the פחת נבילה as well, even though the ניזק was also negligent.⁶

2. If the ניזק was not immediately aware that his ox was killed; who is responsible for the פחת נבילה from the time it was killed till the time that the ניזק became aware of the death of his ox?⁷

⁶ See חי' ר"נ אות שצח.

⁷ See רא"ש אות יא.