

## לא נצרכא אלא לפחת נבילה –

### It was not necessary...only for the depreciation of the carcass

#### OVERVIEW

The גמרא explained that according to the פלגא נזקא קנסא (meaning that in reality the מזיק should be פטור and the ניזק will not receive anything), when the משנה states <sup>1</sup> (בהמזיק) בתשלומין we are (not discussing the חצי נזק, <sup>2</sup> but rather we are) referencing the פחת נבילה that occurs between the time of damage and the time of going to court. This depreciation is the loss of the ניזק, and that is his contribution to the 'payment'. תוספות will explain why accepting this נבילה פחת is considered as a payment by the ניזק; if he is basically not entitled to receive any payment at all.

anticipates a question: תוספות

אף על גב דשקיל דלאו ידידה -

**Even though** the ניזק is **taking what is not rightfully his**; for since פלגא נזקא קנסא, the ניזק is not entitled to any payment. Why therefore does the משנה state בתשלומין (והמזיק); for even though the ניזק suffers the נבילה פחת, however the מזיק never owed him anything in the first place! Why is it considered as if the ניזק is contributing something? He only gains!

answers: תוספות

מכל מקום כיון דזכייה ליה רחמנא חצי נזק -

**Nevertheless, once the תורה entitled** the ניזק to receive a ח"נ -

חשבינן ליה דאיתיה בתשלומין מה שפחת נבילה עליו –

**We do consider that the ניזק is contributing, in the payment process, his loss of the depreciation of the נבילה.** Once the תורה grants the ניזק a חצי נזק he is entitled to the entire חצי נזק. <sup>3</sup> Any loss of this חצי נזק (such as the נבילה פחת) is considered as payment by the ניזק -

[anticipates an additional difficulty<sup>4</sup> (which has already been resolved):

ולא מצי אמר ליה למזיק קרנא דתורן קבירא ביה כדפירישית לעיל [י,ב ד"ה לא נצרכא]:

<sup>1</sup> The ניזק also contributes to the payment (by accepting a lesser amount than he is entitled to).

<sup>2</sup> The חצי נזק which the ניזק does not receive cannot be considered his contribution, since he should not receive anything at all.

<sup>3</sup> See 'Thinking it over' # 1.

<sup>4</sup> Tosfos may be bothered why is the נבילה פחת considered that the ניזק is part of the תשלומין. The ox was killed; the ניזק belongs to the ניזק. Whatever loss the ניזק incurs afterwards (the נבילה פחת), should (seemingly) be considered a loss that any person would have if he fails to protect his property. The ניזק failed to sell his ox as soon as it was killed, therefore it is his loss. Why should this loss be attributed to תשלומין of the ניזק towards the מזיק?! See following footnote # 5 and 'Thinking it over' # 2.

(And) [For] the נזק cannot say to the מזיק, 'the horn of your ox is buried in my cow', and therefore (the horn of) your ox is causing the depreciation, and you, the מזיק, should suffer the depreciation loss.<sup>5</sup> This claim of the נזק will not be honored as I explained previously.<sup>6</sup>

### **SUMMARY**

The נזק is entitled to the פלגא נזקא קנסא (once the תורה awarded it to him) and therefore the loss of פחת נבילה is considered a contribution of payment on behalf of the נזק.

### **THINKING IT OVER**

1. How did תוספות view the payment of קנסא נזקא פלגא in his (initial) question as opposed to תוספות view in the answer?<sup>7</sup>
2. Is there any connection between the last question (and answer) of תוספות,<sup>8</sup> and the previous discussion in this תוספות?<sup>9</sup>

---

<sup>5</sup> תוספות explains that this loss of פחת נבילה is considered תשלומין of the נזק for the היזק, since the נזק can claim that the מזיק is causing this loss for קרנא דתורך קבירא ביה. The מזיק is continually causing the deterioration of the killed ox. This loss however must be paid for by the נזק as תוספות concludes.

<sup>6</sup> תוספות explained there that only in a case where the cow was wounded and its condition deteriorated, do we say the מזיק suffers the depreciation, for the נזק was hoping that the cow would improve. However, when the cow died, the נזק should have sold it immediately, and if he did not, the נזק suffers the loss.

<sup>7</sup> See footnote # 3.

<sup>8</sup> See footnote # 4.

<sup>9</sup> See תל"י אות תכה and חי' ר"נ אות תקלג.