

## **And the first set were found to be discredited      ונמצאו זוממים קמאי -**

### **Overview**

רבא establishes the סיפא of the ברייתא with three sets of עדים in this manner. First set of עדים testified (as mentioned in the ברייתא), first tooth and then eye. בי"ד ruled that the master owes the עבד the value of an eye. A second set of עדים came (not mentioned in the ברייתא) and testified first eye and then tooth. A third set of עדים came and were מזים the first set. The first set must pay דמי עין to the master. תוספות explains why in the רישא the (first) set mentioned in the ברייתא is the second set of the three sets, while in the סיפא the first set in the ברייתא is the first of the three sets.<sup>1</sup>

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**בהך סיפא הוצרך לומר שהעדים שהוזכרו בברייתא שהוזמו הם היו ראשונים -**

**In the סיפא it was necessary to say that the עדים which are mentioned in the ברייתא (first tooth and then eye) who were הוזם, they were the first set of witnesses,** as opposed to the רישא, where the עדים mentioned in the ברייתא (first eye and then tooth) are the second set of עדים. The reason for this difference is -

**משום דצריך לומר דפסקינן לדינא אפומייהו<sup>2</sup> -**

**Because it was necessary to say, that we ruled according to their testimony.** The reason for that is -

**דאין העדים זוממים משלמים עד שיגמר הדין על פיהם -**

**Since ע"ז do not pay unless the case was adjudicated according to their testimony -**

**ואם לא שבאו תחילה לא הוי מצי למפסק דינא אפומייהו<sup>3</sup> -**

**So, if this set of first tooth and then eye, did not come first (but rather second and then they were הוזם), we could not have adjudicated the ruling according to their testimony -**

**אבל ברישא אף על פי שבאו לסוף פסקינן דינא אפומייהו:**

**However, in the רישא, even though that the group which was eventually הוזם (tooth last) came at the end, after group one (eye last), nevertheless we will adjudicate**

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<sup>1</sup> It is advisable to familiarize yourself with the both parts of the ברייתא, and the manner in which they are explained according to רבא. See also 'Appendix' to the previous תוס' ד"ה אמר (beginning on עגב,).

<sup>2</sup> This means the testimony of the witnesses that will ultimately be הוזם.

<sup>3</sup> We are being מזים the set which says eye last. If the set of tooth last testified first, and then the set of eye last testified second we would not rule like the second set, since they are contradicted by the first set, and since we are not ruling like them we cannot be מזים them. However, if the set of eye last testified first, בי"ד will rule like them, and even though they are later contradicted by the second set of tooth last, that does not matter, since eventually set three will come and be מזים the first set, thus proving that הכחשה (by set two) is תחילת הזמה.

**the ruling based on the testimony** of group two (tooth last), since both groups agree that the master owes him at least the value of a tooth.

### **Summary**

עדים cannot be הוזה, unless the ruling is adjudicated according to their testimony. Therefore, in the סיפא the עדים who were הוזה (eye last) had to testify first, so their testimony will be accepted.

### **Thinking it over**

תוספות explained why the סיפא cannot be like the רישא that the ע"ז (eye last) testified second. However, the question still remains why is the רישא not structured like the סיפא that the ע"ז (tooth last) testified first.<sup>4</sup>

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<sup>4</sup> See the עגב on גמרא.