

אילו עד הכא בעית למיתי לאו אגרא בעית למיתב -

If you would want to come till here, would you not have to pay

Overview

in the name of רב ruled, if one rented a donkey and it died midway, the שוכר must pay half the rental. The גמרא explained that we are discussing a case where it is not common to find another rental for the rest of the way, but nevertheless he needs to pay for half the rental, since the משכיר can argue that if you would have wanted to come to this point, you would need to pay for it. תוספות explains this ruling.

תוספות asks:

תימה דהשתא מיהא דלאו עד הכא בעי למיתי למה יתן לו שכר¹ -

It is astounding! For right now, however, he does not want to come here (he wanted to travel further to his destination) so why should he pay for half the rental?!

תוספות answers:

ויש לומר דהא דקאמר לעולם דלא שכיח לאגורי היינו לפי אותן דמים שהשכיר מזה -

And one can say; that this which the גמרא states that it is uncommon to be able to rent here, that means according to the rate which he rented from the original משכיר; he cannot find a rental here for the same price he had coming here -

אבל בטפי פורתא ימצא להשכיר² והרי נהנה במה שבא עד כאן לכך נותן לו חצי שכרו -

However for a little bit more rent he will find a rental to take him to his destination, so therefore he benefited from coming here, therefore he must pay half the rental -

ואין צריך לפחות המשכיר משכרו מה שזה נותן עתה יותר מעט מכאן ואילך כיון דהוא אנוס -
And the שוכר is not required to reduce his fee in the amount which the משכיר is paying slightly more to continue his journey, since it was unavoidable.³

¹ He rented the donkey for one hundred זוז to go twenty מיל from A to C; the donkey stopped in B (after ten מיל). The ruling is that the שוכר must pay fifty זוז (half the amount). תוספות asks since it is לא שכיח לאגורי, the שוכר has no use to be in B; he needs to go to C and he cannot since it is לא שכיח לאגורי, so why should he pay anything? There is no purpose in him being in B!

² The marginal note amends this to read לשכור (instead of להשכיר). The שוכר will need to pay for the remaining ten מיל (to get to C) a bit more (fifty five זוז, instead of fifty זוז). So he benefited from the משכיר whose donkey bought him half way there. See 'Thinking it over # 3.

³ He must pay the משכיר fifty זוז, and cannot deduct five זוז (which he needs to pay extra for the new rental), since the משכיר was אנוס, he did nothing wrong. It was agreed that the fee is one hundred for the twenty מיל, therefore he must pay fifty for the half (ten מיל).

תוספות offers an alternate explanation:

אי נמי כגון שיוכל למכור סחורתו במקום שמת החמור וירויח בה⁵ -

Or you may also say; this is a case where for instance the שוכר can sell his merchandise in the place where the donkey died and he will profit from it -

ויש סוחרים הרבה שאין מביאין סחורתן אלא עד כאן לכך יתן חצי שכרו:

And in fact there are many merchants who bring their merchandise only up to here, therefore he must pay him half the rental.

Summary

The שוכר must pay for the entire half rental, even though the remaining journey will cost slightly more. Alternately he must pay half the rental because he can sell the merchandise here.

Thinking it over

1. It appears from the תוספות א"נ of the חמור to carry merchandise.⁶ However רב רב"ה stated עליה לרכוב את החמור, not for merchandise!⁷

2. what would be the difference in הלכה between the first answer of תוספות and the א"נ?

3. תוספות writes (in the first answer) that he can also rent here, but for a 'slightly' higher price.⁸ What if it is more than 'slightly' higher? Is there a cutoff point?⁹

⁴ See 'Thinking it over' # 1.

⁵ Presumably he will make less profit here than he would in his initial destination, nevertheless he needs to pay חצי שכרו.

⁶ See footnote # 4.

⁷ See תורת חיים.

⁸ See footnote # 2.

⁹ See # 36-8. אוצר מפרשי התלמוד.