

Is a Driver Liable For Damages If The Victim's Car Got Totaled a Minute Later?

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Question: A driver makes a turn and accidentally sideswipes a parked car. He leaves a note on the windshield with his phone number and starts to drive away. Suddenly, he sees another car plow into the same parked car and total it. The owner of the car has his vehicle declared a total loss by the insurance company and is given enough money to buy a new car. Now that he is covered for his entire loss, does the first driver owe him anything?

Answer: The Rashash writes about a similar scenario. A person went into someone's house and broke some furniture, only for the entire house to go up in flames a short time later. Since the house and its contents would have burned anyway, is the man liable for breaking the furniture?

The Rashash proves from a Tosafos in Bava Kama that a damager has to pay for what he did, regardless of what happens later. Tosafos is speaking about a case where someone threw a rock at a dish and someone else breaks it before the rock makes contact. In this case, the dish would have been broken by the rock in any case, yet Tosafos says that the one who broke it is liable for the damage he did.

In our case as well, it's true that the owner received money for a new car, so the damage the first driver caused made no difference to him and caused him no loss. It could, perhaps, be argued that this driver is not liable because one person cannot receive two payments for the same damage. However, I believe that he is nevertheless *chayav* because the second damage is not related to the first in any way.

To further explain: When the insurance company pays for a totaled car, they simply look at the year, make and model of the car and pay its value. This can be compared to the owner "selling" his car to the insurance company for however much they will give him. This would be similar to a scenario where someone scratches a car, and then the owner finds a buyer who doesn't care about the scratches and is willing to pay the same amount the owner could have gotten before it was scratched. Clearly, this would not exempt the damager from paying for the scratches he made. In this case as well, the fact that the insurance company is willing to "buy" the totaled car for its full value does not mean that the one who made the scratches isn't liable for the damage that he did.

Therefore, it would seem that the driver who sideswiped the parked car is obligated to pay for the damage he caused.