

Is It Permitted to Sue a Doctor's Insurance Company in Court?

Rabbi Yitzchak Grossman

Question: Reuven is the victim of medical malpractice and wants to sue his doctor's insurance in order to receive sufficient payment. Is it permitted for him to do that?

Answer: This question is discussed by both Rav Asher Weiss and Rav Yitzchok Zilberstein, both of whom basically allow it.

Rav Weiss assumes that an insurer is obligated to work within whatever the legal framework is and explains that it is always understood that an insurance company will be held liable according to its legal responsibility. He discusses whether the case would have to be brought to beis din, but concludes that this is not really relevant in practice, as the insurance company will almost certainly only agree to be sued in court and will not agree to come to any beis din. Moreover, he adds that a beis din is fundamentally not equipped to adjudicate such matter because a beis din has precisely defined rules for liability that they have to stick to, while a court rules according to the opinion of the judge, which is the standard way that insurance claims work and which is something Dayanim cannot do in a beis din.

Rav Zilberstein discusses a case where the doctor would not be liable according to halacha but the insurer is liable according to secular law. He agrees that there is no problem in taking the insurer to secular court, as it is understood that the company operates under that framework; however, he points out that no one ever really sues an insurance company. Instead, a plaintiff can sue a doctor, and the bill will be paid by the insurance company, which means that one is actually suing a Jew in secular court. In any case, he concludes that because the insurance company will most probably not agree to have a case they are involved with heard in a beis din, one would be permitted to take the case to a secular court.

Question: What if suing the insurance company in court has a negative effect on the doctor's professional reputation?

Answer: Rav Zilberstein says that it is permitted to sue the insurance company even if this insurance indirectly hurts the doctor. He quotes Rav Elyashiv as comparing this to a case where a Jew sues a non-Jew in court, knowing that if he wins the non-Jew will steal from another Jew to pay him the settlement. The Gemara says that this is permitted because this is only an indirect cause of harm which is not prohibited by the Torah. Here too, he says that if one has a legitimate claim against the insurer, he doesn't have to give up his claim even if it will indirectly harm the doctor.