

Damages Reduced When Loss Not Mitigated

Under the law of damages it is the responsibility of an injured person to 'do the best they can' to minimise ('mitigate') the effect of any loss they have suffered. For example, a footballer who loses a leg clearly can no longer play football but would be expected to try to find another occupation, thus mitigating his loss. Failing to do so can be expensive.

Recently, a driver was ordered to pay over £200,000 in damages for injuries suffered by a passenger travelling in a car with which he was in collision. The accident changed the personality of the passenger, leaving her weaker, more easily tired, more anxious and less able to work. She had given up her existing profession of teaching and had taken on part-time work making only £2,000 per annum. She also suffered continuing neck pain. An expert who was appointed as joint expert had accepted that when framing his report he was 'inclined towards the passenger'. The expert had concluded that she had suffered brain damage.

The driver appealed against the award, claiming that the expert's evidence was not impartial and that the injured woman had not made a sufficient effort to mitigate her loss. The court ruled that in spite of the potential for partiality on the part of the expert, there was no reason to believe that the judge in the first hearing had erred in accepting that brain damage was a probable cause of the woman's symptoms. That aspect of the appeal was therefore rejected. However, the appeal judges considered that the woman had not fully mitigated her loss and had the capacity to earn £3,500 per annum for the foreseeable future, so the damages awarded should be recalculated accordingly.