

Psychological injuries caused by a motor vehicle accident do not justify a plaintiff's failure to follow prescribed treatment

Reported Case	Ksiazek v. Newport Leasing Ltd.
Citation	2010 ONCA 341 – May 11, 2010
The Court	Ontario Court of Appeal
At Issue	Do the plaintiff's psychological injuries caused by the accident justify her failure to follow the treatment recommendations of her health care providers?
Factual Summary	<p>The plaintiff was injured in a motor vehicle accident and suffered psychological and physical injuries. She commenced an action against the lessor, lessee and driver of the vehicle that struck the car in which she was a passenger. The defendants admitted liability and the trial proceeded on damages. The trial judge awarded general damages of \$45,000, damages for past loss of income of \$54,600 and damages for future care in the amount of \$7,500.</p> <p>The trial judge found the plaintiff failed to mitigate her damages thereby warranting a 25% reduction in general and past loss of income damages. The plaintiff appealed the mitigation findings.</p>
Decision	<p>On appeal, the plaintiff argued the trial judge misapprehended the evidence of the nature and duration of the plaintiff's psychological injuries which the plaintiff claimed prevented her from freely choosing to undertake treatment and medication regimes recommended by several of her health care providers. The plaintiff submitted this error fatally tainted the trial judge's adverse mitigation findings.</p> <p>The plaintiff relied heavily on the fact that the plaintiff's family physician appeared to have prescribed anti-depressant medication for her shortly after the accident and argued this suggested the early onset of debilitating psychological injuries.</p> <p>The Court of Appeal rejected the plaintiff's argument and found the fact the plaintiff was prescribed anti-depressants soon after the accident was insufficient to establish that psychological injuries caused by the accident accounted for the plaintiff's failure to adhere to certain of the treatment recommendations of her health care providers.</p> <p>Also, there was evidence the plaintiff declined various recommended treatments and medical care before the onset of any symptoms of psychological injury. Therefore, there was no error in the trial judge's mitigation findings.</p>