

XP v Compensa Towarzystwo SA v Przeyslaw Bejger [2016] EWHC 1728 (QB)

By [Hugh Rimmer](#), Personal Injury Law Barrister

Summary: The Claimant, a 40 year-old single woman, claimed damages arising from two road traffic accidents. In both accidents the defendant drivers had admitted fault. The claim is of interest because of the claim for fertility treatment and the basis on which it was made.

XP v Compensa Towarzystwo SA v Przeyslaw Bejger

The Claimant was pregnant at the time of the first accident, in April 2011, but was no longer in a relationship with the baby's father. The accident caused a traumatic miscarriage, but the claim for fertility treatment was not one based on any physical injury causing impairment to the physical ability to conceive. As a result of the accident the Claimant had developed PTSD and in particular struggled around pregnant women and mothers with children. After leaving her job she could not find alternative work, and became isolated and depressed. She started her own online jewellery company, but after the second accident her PTSD was exacerbated and more serious depression developed. The company failed, and she was unable to find a permanent job. Though she wanted a baby, the financial and social difficulties arising from her psychological condition created significant problems and she had not had a relationship since 2011.

The First Defendant argued that the Claimant remained fertile and the problem was her lack of a partner, not the first accident; effectively the Claimant had failed to mitigate her loss by not finding another partner and becoming pregnant.

The First Defendant's argument was rejected by the judge. The claim for fertility treatment was restorative. It was essentially to put the Claimant back into the position she was had the 2011 accident never happened. Her fertility was progressively reducing with time and age, which was the reason IVF was required. Time was pressing and the Claimant could not afford to wait for a partner. The judge concluded that the Claimant had not been able to mitigate this loss by meeting someone because she had been psychiatrically unwell, struggling financially, and socially isolated. Those were all good reasons why she had been unable to find a partner, and the First Defendant could not rely on this as a failure to mitigate, because that state of affairs arose directly as a result of the accident.

Accordingly, the Claimant was awarded the cost of 3 cycles of IVF treatment, in the sum of £18,150.

HUGH RIMMER

3PB BARRISTERS

1 August 2016