



areas, and that he continues to experience pain and stiffness in the area of his wrist and right hip. He related that his residual pain and the limitations in use of his wrist affect his sex life, his ability to exercise and, to some extent, his employment opportunities because any type of repetitive movement or action causes a flare up of his symptoms. Plaintiff further testified that he can no longer work in the construction field because of these problems.

{¶4} Plaintiff is seeking reimbursement for medical expense in the amount of \$1,764.25 for treatment that he claims is related to the accident. Of that amount, \$80 was paid by Blue Cross/Blue Shield. Plaintiff also claims that he lost approximately \$875 for time that he was away from work due to his injuries and the need for medical attention; he does not claim any specific amount for work loss related to his inability to perform repetitive work tasks. In sum, plaintiff maintains that the evidence supports his prayer for relief in the amount of \$75,000.

{¶5} In response to plaintiff's claims, defendants have asserted numerous arguments. For example, with respect to plaintiff's claimed physical injuries, defendants note that plaintiff testified that he was driving at approximately 25 miles per hour, at the time of impact with the salt truck; that he was wearing his seatbelt; that when questioned at the scene, plaintiff stated that he did not need medical attention; that it was almost a month later before plaintiff first sought medical treatment from his family physician, Gary Stucke, D.O.; that Dr. Stucke's records reflect that he treated plaintiff only for "alcoholism unspecified"; and that the expenses plaintiff claims for an x-ray and an MRI were not incurred until more than one year after the accident. Defendants further note that plaintiff claimed to have been prescribed, and to be currently using, Motrin for his continuing pain; however, there was no evidence to substantiate that claim, not even so much as one of the containers in which a prescription may have been dispensed. Finally, defendants note that plaintiff admitted that he was cited for driving under suspension at the time of the accident; that he served ten days in jail for that offense; and that he did not produce any medical records from the jail to demonstrate that he requested or received any medical attention for his injuries during that time.

{¶6} With respect to damages related to the loss of plaintiff's vehicle, defendants argue that the vehicle had 159,000 miles on it at the time of the accident; that only the \$90 expense to Carriage

Towing was supported by the evidence; and that it is undisputed that the blue book value of the vehicle was \$2,325.

{¶7} Defendants concede that plaintiff may have lost time from work. At the time of the accident, plaintiff was employed by Moser Construction Company. His rate of pay varied from \$16 to \$18 per hour, and could go as high as \$21.18 per hour for certain types of work. Based upon the testimony that plaintiff worked approximately 29 hours per week and that he worked 19 hours during the week following the accident, defendants argue that, at most, plaintiff lost wages in the amount of \$211.80, based upon the maximum hours that could have been worked at the highest rate of pay. In conclusion, defendants assert that plaintiff's total damages, including medical bills, pain and suffering, damages related to his vehicle, and his lost wages total \$2,838.60, or \$1,419.30 after deducting 50 percent as specified in this court's liability determination.

{¶8} Upon review of the evidence and the arguments of counsel, this court concludes that the decision in this matter depends almost entirely upon plaintiff's credibility. He was the only witness to testify regarding his economic and physical damages. In determining the issue of witness credibility, the factors to be considered are:

{¶9} “\*\*\* the appearance of [the] witness upon the stand; his manner of testifying; the reasonableness of the testimony; the opportunity he had to see, hear and know the things about which he testified; his accuracy of memory; frankness or lack of it; intelligence, interest, and bias, if any; together with all facts and circumstances surrounding the testimony.” *Adair v. Ohio Dept. of Rehab. & Corr.* (1998), 96 Ohio Misc.2d 8, 11; see, also, 1 Ohio Jury Instructions (1994), Section 5.30.

{¶10} Applying these factors to the present case, the court finds as follows. Plaintiff's appearance on the stand, his manner of testifying, and the reasonableness of the testimony are all factors that weigh against him. Although he was a candid witness, the court's overall impression was that plaintiff did not take the proceedings seriously and did not appear concerned with providing consistent, truthful responses to questions. Consequently, much of plaintiff's testimony is not worthy of belief; unfortunately, it is the only evidence that he presented to support the greater part of his damage claims. With that in mind, the court concludes that plaintiff is entitled to reimbursement

for the \$2,325 blue book value of his vehicle, the \$90 towing fee; and \$148.26 for seven hours of work loss at \$21.18 per hour to attend to matters following the accident, all of which must be reduced by 50 percent pursuant to R.C. 2315.19 and the court's prior ruling. The court believes that plaintiff suffered only minor bruising and stiffness from the impact with the salt truck; that he does not suffer any continuing pain or injury; and that he has not incurred any past or prospective wage loss as a result of his claimed injuries.

{¶11} Accordingly, it is recommended that damages be awarded in favor of plaintiff in the amount of \$1,306.63, which includes this court's \$25 filing fee.

{¶12} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).*

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LEE HOGAN  
Magistrate

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Case No. 2001-12061

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MAGISTRATE DECISION

Columbus, Ohio 43215-3130

LH/cmd

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To S.C. reporter September 7, 2004