

**GREG PRASKER**

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**NO. 2002-CA-0175**

**VERSUS**

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**COURT OF APPEAL**

**REGIONAL TRANSIT  
AUTHORITY, TRANSIT**

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**FOURTH CIRCUIT**

**MANAGEMENT OF  
SOUTHEAST LOUISIANA  
AND ALEXANDER BAKER**

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**STATE OF LOUISIANA**

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APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 2000-4581, DIVISION "B-15"  
Honorable Rosemary Ledet, Judge

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**JOAN BERNARD ARMSTRONG**

**JUDGE**

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(Court composed of Judge Joan Bernard Armstrong, Judge Miriam G.  
Waltzer and Judge Dennis R. Bagneris, Sr.)

**CHRISTOPHER J. BRUNO**  
BRUNO & BRUNO  
825 BARONNE STREET  
NEW ORLEANS, LA 70113

COUNSEL FOR PLAINTIFF/APPELLEE

**LEONARD L. LEVENSON**  
427 GRAVIER STREET  
THIRD FLOOR  
NEW ORLEANS, LA 70130

COUNSEL FOR DEFENDANT/APPELLANT

**AFFIRMED.**

This case involves an accident between a motorcycle and a city bus. The trial court found both the plaintiff motorcycle rider and the bus driver at fault and awarded damages to the plaintiff. The defendants appeal. Because the record reveals no clear wrongness/manifest error in the trial court's findings, we will affirm.

The plaintiff, Greg Prasker, was riding his motorcycle westerly on Freret Street near the intersection of McAllister street. An RTA bus was at a bus stop slightly ahead of him on the right side of Freret. As it appeared to Prasker that the bus would remain at the bus stop long enough for him to pass, he proceeded ahead. Thus, he planned to pass to the left of the bus, while in the right lane of Freret, while the bus waited at the bus stop on the right side of Freret.

As Mr. Prasker was in the process of passing the bus, and was somewhat behind and to the left of the bus, the bus pulled away from the bus stop and came into Freret in front of the motorcycle. As there were

oncoming cars in the left lane of Freret, Mr. Prasker could not change lanes without a head-on collision. Thus, he braked hard to avoid running straight into the side of the bus. He stopped short of the bus but the hard braking caused his motorcycle to fall over and, thus, he fell to the pavement.

Mr. Prasker was taken to a hospital emergency room, treated and released. He was later seen by several doctors for neck pain and eventually underwent neck surgery (a cervical fission). His surgeon attributed the neck injury, and the necessity for surgery, to the accident with the bus. After a bench trial, the trial court found Mr. Prasker 10% at fault and the bus driver 90% at fault. The trial court awarded Mr. Prasker \$52,285.76 for past medical expenses and \$250,000 for general damages. The defendants appeal as to the allocation of fault, as to the causation of the injury and as to the quantum of general damages.

The defendants argue that Mr. Prasker was more than 10% at fault because a motorist should not attempt to pass another vehicle without first determining that the passing maneuver can be accomplished safely. However, Mr. Prasker could reasonably have concluded that the bus driver, before pulling away from the bus stop, would check for vehicles passing him

on his left on Freret street and would not pull away from the bus stop until after Mr. Prasker had passed. In fact, the bus driver did see Mr. Prasker but, apparently thinking Mr. Prasker was further behind the bus than he was, pulled out in front of Mr. Prasker.

The defendants also argue that Mr. Prasker violated a statute by attempting to pass another vehicle within one hundred feet of an intersection (i.e. the intersection of McAllister and Freret). There is a factual issue as to whether Mr. Prasker was within 100 feet of the intersection when he was passing the bus which the trial court may have resolved in favor of Mr. Prasker. Also, we do not think that the statute applies to “passing” a bus that is stationary on the curb at a bus stop as opposed to a vehicle in motion in the lane of traffic. In any case, nothing about the proximity of the intersection contributed to this accident.

The defendants also argue that Mr. Prasker acted “irrationally” by locking the brakes on his motorcycle and, thus, causing it to fall over. However, Mr. Prasker’s other alternatives were to either swerve into the left lane and have a head-on collision with an oncoming car or to proceed straight ahead and run into the side of the bus.

The defendants also argue that Mr. Prasker was “negligent per se” because he had only two months experience in operating a motorcycle and because he did not have a motorcycle endorsement to his driver’s license. However, there is nothing in the record which shows that Mr. Prasker’s limited experience riding a motorcycle or his lack of a motorcycle endorsement to his driver’s license had anything to do with this accident.

The defendants argue that only defendant Transit Management of Southern Louisiana (“TMSL”) and not RTA, can be held liable because TMSL operates city buses and RTA merely owns city buses. However, the defendants did not make this argument at trial and it appears to be contrary to their Answer filed below.

The defendants argue that the accident at issue did not cause Mr. Prasker’s neck injury. However, Mr. Prasker’s surgeon, who treated him for the neck injury, attributed the neck surgery to the accident with the bus.

The defendants argue that the \$250,000 award for general damages is excessive. However, the trial court has “vast” discretion as to the amount of general damages. Youn v. Maritime Overseas Corp., 623 So.2d 1257 (La. 1993). Considering that Mr. Prasker underwent major surgery and has

permanent disability, we cannot say that the trial court abused its vast discretion.

For the foregoing reasons, we affirm the judgment of the trial court.

**AFFIRMED.**