ELNORA HASBERRY, WIFE OF/AND EUGENE HASBERRY, SR.	*	**NO. 2000-CA-0448**
	*	**COURT OF APPEAL**
VERSUS	*	**FOURTH CIRCUIT**
RTA, REGIONAL TRANSIT AUTHORITY, TMSEL, INC., AND/OR TRANSIT MANAGEMENT OF SOUTHEAST LOUISIANA, INC., DIESEL, INC. AND/OR CLARENCE MORET AND JOHN DOE	*	**STATE OF LOUISIANA**
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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 94-11200, DIVISION "A-5"
HONORABLE CAROLYN GILL-JEFFERSON, JUDGE
* * * * * *

JAMES F. MC KAY, III
JUDGE

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(Court composed of Judge Joan Bernard Armstrong, Judge James F. McKay, III, Judge Dennis R. Bagneris, Sr.)

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AFFIRMED

In this personal injury action, the plaintiffs, Eugene and Elnora Hasberry, appeal the trial court's award of damages as well as the trial court's apportioning 20 % of the fault to Mr. Hasberry. We affirm.

FACTS AND PROCEDURAL HISTORY

On July 18, 1993, Eugene Hasberry, a quadriplegic confined to a wheelchair, boarded a lift bus operated by New Orleans Diesel, Inc. under a contract with the Regional Transit Authority (RTA) and driven by Rodney Hunter. Upon boarding the bus, Mr. Hunter fastened the safety belt that secured Mr. Hasberry's wheelchair to the bus but he did not attach the strap designed to hold Mr. Hasberry into his wheelchair.

While the lift bus was traveling down Piety Street at approximately five to fifteen miles per hour, Mr. Hunter made a sudden stop when a parked car's door opened, and a passenger exited the vehicle and stepped into the lift bus' path. Mr. Hasberry contends that he then fell to the floor where he hit his head and slid to the front of the bus where he hit his head again. Mr. Hunter contends that Mr. Hasberry did not fall out of his wheelchair but only

fell forward in the chair and wound up with his buttocks straight up in the air. Several days after the incident, Mr. Hasberry went to see Dr. Adrian James, his internist, because of rib pain.

On August 13, 1993, Mr. Hasberry was transported by ambulance to Charity Hospital after he suffered respiratory arrest accompanied by cardiac arrest for ten seconds. At this time, Mr. Hasberry also complained of transient losses of consciousness over a several month period. The next day Mr. Hasberry was transferred to Methodist Hospital where Dr. James and Dr. Joseph Epps, his treating neurologist, examined him. They were unable to identify the cause of Mr. Hasberry's respiratory arrest and prescribed an anti-spasmatic medication for him.

On December 14, 1993, Mr. Hasberry returned to Methodist Hospital suffering with the same symptoms. At this time, Dr. Epps concluded that a syrinx within Mr. Hasberry's spinal cord, which had first been diagnosed in September of 1992, was the cause of his respiratory failure. On December 30, 1993, Dr. Epps operated on Mr. Hasberry to decompress his spinal cord.

Mr. Hasberry asserts that due to this accident, he sustained neurological damage to his cervical spine, loss of sexual function, mental

anguish, and loss of physical and emotional strength. Mr. Hasberry brought suit against Mr. Hunter, the RTA, Clarence Moret, the Southern Cooperative Development Fund, Inc., Assicurazioni Generali, S.p.A., and Transit Management of Southeast Louisiana, Inc. (TMSEL). Mr. Hasberry's wife, Elnora, also filed a claim for loss of consortium.

The trial court found that Mr. Hasberry did in fact fall out of his chair but that he did not slide to the front of the bus as he maintained. The trial court further found that Mr. Hasberry suffered only bruised ribs and abrasions as a result of the lift bus incident and not the more serious medical conditions claimed as results. Accordingly, the trial court awarded only $7,500.00 in damages to Mr. Hasberry and $500.00 to Mrs. Hasberry for loss of consortium. However, the trial court found that Mr. Hasberry was 20 % at fault for the incident because he failed to mention anything about the belt not being fastened. It is from this judgment that the plaintiffs now appeal.

DISCUSSION

On appeal, the plaintiffs raise five specifications of error. They contend: 1) the trial court erred in finding Eugene Hasberry 20% at fault; 2)

the trial court erred in finding that Mr. Hasberry's cervical surgery was not necessitated by injuries sustained in the bus accident on July 18, 1993; 3) the trial court erred in finding that the bus accident of July 18, 1993 did not cause loss of sexual function in Mr. Hasberry; 4) the trial court erred in failing to award uncontested medical expenses arising out of surgery and recuperation of December 1993; and 5) the trial court erred in failing to award damages for loss of mental and physical strength. Essentially, the plaintiffs take issue with the trial court's apportionment of fault, its determinations regarding the causation of Mr. Hasberry's medical conditions, and its award of damages.

All of the issues raised by appellants are questions of fact which are subject to the manifest error standard of review. Where two permissible views of the evidence exist, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong. Stobart v. State, DOTD, 617 So.2d 880, 883 (La. 1993). The issue to be resolved by the reviewing court is not whether the trier of fact was right or wrong, but whether the factfinder's conclusion was a reasonable one. Id. at 882. The reviewing court may not disturb reasonable evaluations of credibility and reasonable inferences of

fact when viewed in light of the record in its entirety even though it feels its evaluations are more reasonable. Id. Even though an appellate court may feel its own evaluations are more reasonable than the factfinder's, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review where conflict exists in the testimony. Id. If the trial court or jury's findings are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse, even if convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Id.

The trial court found that the defendants were 80 % at fault for the incident while it determined that Mr. Hasberry was 20 % at fault. Louisiana has adopted "[a] pure comparative fault system" in allocating fault among parties to a personal injury lawsuit. Watson v. State Farm Fire & Cas. Ins. Co., 469 So.2d 967, 972 (La. 1985). In apportioning fault, the fact finder "should consider the conduct of each party at fault, and the extent of the causal relationship between the conduct and the damages claimed." Sagona v. Harris, 97-0129 (La.App. 4 Cir. 6/18/97), 696 So.2d 595, 596.

In apportioning fault, the trial court relied on the factors established

by the Louisiana Supreme Court in Watson. These factors are:

> (1) whether the conduct resulted from inadvertence or involved an awareness of the danger, (2) how great a risk was created by the conduct, (3) the significance of what was sought by the conduct, (4) the capacities of the actor, whether superior or inferior, and (5) any extenuating circumstances which might require the actor to proceed in haste, without proper thought. And of course, as evidenced by concepts such as last clear chance, the relationship between the fault/negligent conduct and the harm to the plaintiff are considerations in determining the relative fault of the parties.

469 So.2d at 974.

Specifically, the trial court held "that as the strap went on Mr. Hasberry, he was in a superior position to know that it was not attached." Being that Mr. Hasberry rode the RTA lift buses to Delgado Community College and else where at least three times per week, he was aware of the seating procedures for wheelchair-bound passengers on the lift buses and the accompanying safety belts. Mr. Hasberry testified that he was aware that Mr. Hunter did not attach the strap. Mr. Hasberry further testified that he did not say anything to Mr. Hunter about the strap for two reasons: because he thought Mr. Hunter should have strapped him into his wheelchair without having to be told, and because he was dependent on the lift service for transportation and he did not want to anger Mr. Hunter. Based on these facts, we find no error in the trial court's apportioning 20% of the fault in the

lift bus incident to Mr. Hasberry.

When a tortfeasor's "conduct aggravates a pre-existing condition, the [tortfeasor] must compensate the victim for the full extent of aggravation." Lasha v. Olin Corp., 625 So.2d 1002, 1006 (La. 1993). However, "[b]efore recovery can be granted for an aggravation of a pre-existing condition, a causative link between the accident and the victim's current status must be established. Causation is a question of fact, entitled to great weight, and the determination cannot be disturbed on appeal absent manifest error." Haydel v. Hercules Transp., Inc., 94-1246 (La. App. 1 Cir. 4/7/95), 654 So.2d 418, 432, writ denied, 95-1172 (La. 6/23/95), 656 So.2d 1019.

In the instant case, the trial court found that the plaintiffs failed to prove any causal connection between the damages claimed and a pre-existing medical condition aggravated by the lift bus incident. It is undisputed that the syrinx developed long before the lift bus incident and that it was first diagnosed in September of 1992. The medical testimony also established that the syrinx was located from C-4 to T-1 at least ten months prior to the lift bus incident.

A syrinx is by its very nature degenerative and thus likely to enlarge and worsen over time. Thus, the progressive development of the syrinx in the C-4 area could have caused progressively worse respiratory problems.

Accordingly, we find no error in the trial court's factual finding that Mr. Hasberry's complaints originated from his pre-accident condition and did not result from any aggravation of his pre-existing medical conditions. Furthermore, considering the lack of evidence on the issue, we find no error in the trial court's finding that there was no causative link between the lift bus incident and Mr. Hasberry's loss of sexual function.

The damages awarded by the trial court to the Hasberry's were based on the trial court's finding that the only injuries which the plaintiffs proved resulted from the July 18, 1993 lift bus incident were Mr. Hasberry's bruised ribs, abrasions and loss of physical and mental strength. The trial court awarded $7,500.00 to Mr. Hasberry and $500.00 to Mrs. Hasberry. Because the trial court determined that the lift bus incident was not the cause-in-fact of Mr. Hasberry's symptoms of respiratory arrest, loss of sexual function, and loss of relationship with his wife and family, these damages appear appropriate. In any event, when making general damage awards, the discretion vested in the trier of fact is "great," and even vast, so that an appellate court should rarely disturb an award of general damages. Youn v. Maritime Overseas Corp., 623 So.2d 1257 (La. 1993). Accordingly, we find no error in the trial court's quantum of damages.

CONCLUSION

For the foregoing reasons, we find no error in the trial court's findings and affirm its judgment.

AFFIRMED