

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 20, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 98-2930-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

RASHID A. OSMAN,

PLAINTIFF-APPELLANT,

v.

ALLEN R. PHIPPS,

DEFENDANT,

**ENTERPRISE RENT-A-CAR COMPANY
AND/OR ENTERPRISE RENT-A-CAR Co., INC.,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Milwaukee County: PATRICIA D. McMAHON, Judge. *Reversed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

PER CURIAM. Rashid Osman appeals from the trial court's grant of summary judgment in favor of Enterprise Rent-A-Car Company. The issue is

whether Osman may bring a claim against Enterprise under § 344.51, STATS., 1995-96,¹ when he has already received compensation for his injuries in excess of the statutory minimum set forth in §§ 344.51(1) and 344.01(2)(d), STATS. Pursuant to this court's order dated November 24, 1998, this case was submitted to the court on the expedited appeals calendar. *See* RULE 809.17, STATS. We reverse.

The facts are not in dispute. Osman, a Canadian citizen, was seriously injured when a car he was driving was struck by a car driven by Allen Phipps. Osman's car was rented from Hertz and was insured by Zurich Insurance Company. Phipps's car was rented from Enterprise and was self-insured by Enterprise for \$25,000, the minimum required by §§ 344.51(1) and 344.01(2)(d), STATS.

Osman received some compensation for his damages under Ontario's No Fault Insurance Law. He received \$32,000 Canadian dollars from Zurich Insurance Company and Zurich paid some of his medical expenses. He also received some free medical treatment under Ontario's Health Insurance Plan. He incurred other medical expenses that were not paid and he received no compensation for pain and suffering.

Osman brought this action against Enterprise pursuant to § 344.51(1), STATS., seeking damages for pain, suffering, disability, loss of livelihood and medical costs. Section 344.51(1) requires companies renting or

¹ Throughout this opinion, all references are to § 344.51, STATS., 1995-96. The legislature renumbered and amended the statute on December 15, 1997. *See* 1997 Wis. Act 48, § 3j.

leasing cars to provide insurance for any negligent acts done by persons driving their cars. The relevant part of the statute provides:

No person may for compensation rent or lease any motor vehicle to be operated by or with the consent of the person renting or leasing the vehicle unless there is filed with the department a good and sufficient bond or policy of insurance issued by an insurer authorized to do an automobile liability insurance or surety business in this state. The bond, policy or certificate shall provide that the insurer which issued it will be liable for damages caused by the negligent operation of the motor vehicle in the amounts set forth in s. 344.01(2)(d).

See § 344.51(1).

The trial court concluded that the statute was intended to make a lessor liable for a lessee's negligence only if the injured party had not already received compensation in the amount set forth in § 344.01(2)(d), STATS. Because Osman had already received compensation in excess of \$25,000, the statutory minimum liability limit for an accident involving bodily injury to one person, the trial court concluded that Enterprise was not liable to Osman, even if his damages exceeded that amount. Therefore, the trial court granted summary judgment dismissing Osman's claim against Enterprise.

Summary judgment is appropriate when "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Thompson v. Threshermen's Mut. Ins. Co.*, 172 Wis.2d 275, 280, 493 N.W.2d 734, 736 (Ct. App. 1992). We review the trial court's decision granting summary judgment *de novo*. See *Germanotta v. National Indem. Co.*, 119 Wis.2d 293, 296-97, 349 N.W.2d 733, 735 (Ct. App. 1984).

In promulgating § 344.51(1), STATS., “[t]he legislature [made] a policy decision that lessors were liable to persons harmed by the negligence of the lessee, *if* the lessee was unable to pay the damages.” *American Family Mut. Ins. Co. v. Reciprocal Ins. Serv. Exch. Management Co.*, 111 Wis.2d 308, 311, 330 N.W.2d 223, 224 (Ct. App. 1983) (emphasis in original). A lessee is unable to pay the damages when a lessee has insurance, but the insurance limits are insufficient to fully compensate the victim for damages sustained. *Germanotta*, 119 Wis.2d at 298, 349 N.W.2d at 735-36.

In this case, like *Germanotta*, Osman has alleged that he has not been fully compensated for his damages. Because Osman has alleged that he was harmed by the negligence of Phipps, the lessee, Enterprise, the lessor, is liable to Osman up to the \$25,000 limit provided for in §§ 344.51(1), and 344.01(2)(d), STATS., even if Osman has partially recovered from other sources. There is nothing in the statute that limits Osman’s recovery from Enterprise to situations where he has received less than \$25,000 from all sources. The statute simply states that the lessor shall carry insurance “for damages caused by the negligent operation of [a rented] motor vehicle in the amounts set for in s. 344.01(2)(d).” The lessor is liable whenever the lessee is unable to fully pay the damages. *Germanotta*, 119 Wis.2d at 298, 349 N.W.2d at 735-36; *American Family*, 111 Wis.2d at 311, 330 N.W.2d at 224. Therefore, we reverse the trial court’s decision granting summary judgment dismissing Enterprise and remand for a trial or other proceedings consistent with this opinion.²

² We conclude that Osman is not entitled to costs on appeal pursuant to RULE 809.25(1)(a)2, STATS., because his brief did not comply with the Rules of Appellate Procedure. There were no record references in his brief and he did not include a copy of the trial court’s oral decision in his appendix. See RULE 809.19, STATS.

By the Court.—Judgment reversed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

