IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
FRIDAY, THE 24TH DAY OF MARCH 2023 / 3RD CHAITHRA, 1945

MACA NO. 2438 OF 2009

OP(MV)NO.1400/2004 OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, IRINJALAKUDA

APPELLANT/PETITIONER IN OP(MV):

SUKUMARAN, S/O.VELAPPAN,
THATTEPARAMBIL HOUSE, POTTA DESOM AND POST,
CHALAKUDY VILLAGE, MUKUNDAPURAM TALUK, THRISSUR DISTRICT.

BY ADVS.
SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENTS/RESPONDENTS IN OP(MV):

1 **R.C. IBRAHIM, S/O.PATHUMMA,**
RAROTH CHALIL HOUSE, MANIPURAM P.O., KODUVALLY, KOZHIKODE DISTRICT.

2 **ELIAS K.M., C/O. R.C.IBRAHIM,**
RAROTH CHALIL HOUSE, MANIPURAM P.O., KODUVALLY, KOZHIKODE DISTRICT.

3 **THE NEW INDIA ASSURANCE CO. LTD.,**
TRIPURI BUILDINGS, EAST NADAKKAVU-673001.

4 **P.J.JOY, S/O. JOHNY,**
POTTAKARAN HOUSE, POTTA P.O.,

5 **THE NATIONAL INSURANCE CO. LTD.,**
DIVISIONAL OFFICE, THRISSUR.

BY ADVS.
SRI.A.C.DEVY
SMT.RAJI T.BHASKAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 10.03.2023, THE COURT ON 24.03.2023 DELIVERED THE FOLLOWING:

"CR"

J U D G M E N T

The claimant in OP(MV)No.1400 of 2004 on the file of the Motor Accidents Claims Tribunal, Irinjalakuda, is the appellant herein, challenging the award of the Tribunal, by which his claim for compensation was dismissed.

2. On 06.03.2004 at 11.40 p.m. while the appellant was travelling in his lorry bearing Registration No.KL-8/Y-9909, driven by the 4th respondent, he met with a road traffic accident, and as a result, he sustained serious bodily injuries including amputation of his right hand. He was travelling in that lorry as the owner-cum-spare driver. The accident occurred when the lorry owned by the appellant happened to hit against KL-10/L-8460 lorry, which was parked in a public road in a negligent manner, without putting on the park lights or any other precautionary indications. The 2nd respondent was the driver of that lorry, 1st respondent was its owner and the 3rd respondent was its Insurer.

3. The 4th respondent was the driver of the lorry owned by the appellant and the 5th respondent was its Insurer. The appellant approached the Tribunal with a claim under Section 163A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the MV Act') but it was dismissed finding that a claim under Section 163A of the MV Act was not

maintainable, and he was not eligible to get any compensation even under Section 166 of the MV Act. Aggrieved by the dismissal of his claim for compensation, he has come up with this appeal.

4. Respondents 1 and 2 remained *ex parte.* Notice against the 4th respondent was dispensed with. Respondents 3 and 5 entered appearance. The 5th respondent, i.e., the Insurer of the lorry owned by the appellant, contended that the appellant was only a gratuitous passenger in that lorry, and even as the owner of the vehicle or as the insured, he cannot claim any compensation under Section 163A of the MV Act, as the owner was not covered by the Policy issued by the company.

5. The 3rd respondent, the Insurer of the lorry, which was in parked condition, though admitted the insurance coverage of that lorry as on the date of accident, according to them, the said lorry was not involved in any accident. In fact, that lorry was safely parked at the side of the road and the accident occurred due to the rashness and negligence on the part of the 4th respondent-the driver of the appellant. So they also contended that the claim of the appellant under Section 163A of the MV Act was not maintainable.

6. Before the Tribunal, PW1 was examined Exts. A1 to A9 and B1 were marked.

7. Heard learned counsel Sri.P.V.Baby appearing for the appellant learned counsel Sri.A.C.Devy appearing for the 3rd respondent and

learned counsel Smt.Raji T. Bhaskar appearing for the 5th respondent.

8. Now let us have a re-appraisal of the facts and evidence to find out whether there is any illegality or impropriety in the impugned award, warranting interference by this Court.

9. Learned counsel for the appellant admitted that there was no personal accident coverage for the owner, as per Ext. B1 Policy Certificate, and so he is not making any claim against the 5th respondent. During cross-examination of PW1-appellant by the 5th respondent, he admitted that there was no negligence from the part of the 4th respondent, who was the driver of his lorry, and so much so the 5th respondent has no liability to indemnify the insured. Moreover, he stated in unequivocal terms that he is not claiming any compensation from the 5th respondent, who is the Insurer of the lorry owned by him. So, there is no need to look into the liability of the 5th respondent. Now the question is regarding the liability, if any, of respondents 1 to 3 to compensate the appellant.

10. The main argument of the 3rd respondent-Insurer is that KL-10/L-8460 lorry insured with them, was not involved in any road traffic accident, and in fact, it was safely parked by the roadside. Due to the rash and negligent driving of KL-8/Y-9909 lorry by the 4th respondent, it dashed against KL-10/L-8460 lorry, which was parked on the roadside and the appellant sustained injuries. Since there was no rashness or

negligence from the part of respondent No.2, in parking the lorry by the roadside, the 3rd respondent-Insurer has no liability to compensate the appellant, though that vehicle was covered with a valid policy.

11. The primary question to be answered is whether KL-10/L-8460 lorry was involved in this accident. It is an admitted fact that there occurred a collision between KL-8/Y-9909 lorry and KL-10/L-8460 lorry, if at all, that collision occurred due to the rash and negligent driving of KL-8/Y-9909 lorry by the 4th respondent. Admittedly, KL-10/L-8460 lorry was not in motion, and it was parked by the side of the road. Learned counsel for the appellant relied on very many decisions to say that, the only thing to be proved in a claim under Section 163A of the MV Act is that, the death or permanent disablement occurred due to the accident arising out of the use of motor vehicle, and the expression 'use of a motor vehicle' covers accidents, which occurred both when the vehicle is in motion and when it is stationary. So according to the appellant, if at all KL-10/L-8460 lorry was stationary at the time of accident, in fact, the accident arose out of the use of that motor vehicle. According to PW1, his driver suddenly swerved the lorry to the left side, on seeing a boy abruptly crossing the road, and it happened to hit against KL-10/L-8460 lorry, which was parked on the roadside. He would say that if that lorry was not parked there, there was no chance for collision of his lorry with that lorry, and he might not have suffered serious injuries including

traumatic amputation of his right hand. So according to him, KL-10/L-8460 lorry was also involved in the accident and so the accident arose out of the use of that motor vehicle also.

12. Section 163A of the MV Act reads as follows:

> "[**163A. Special provisions as to payment of compensation on structured formula basis.**--(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.
>
> *Explanation.*--For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).
>
> (2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.
>
> (3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.]"

13. In **Soundarajan @ Johnson D v. Ebenezer Marcus Kinder**

Garden School and Another [2019 KHC 4969 Madras High Court] in paragraph 12 it is held as follows:

> "S.163 A of the M.V.Act was introduced in the Act by way of a social security scheme. It is a Code by itself. It appears from the objects and reasons of the Motor Vehicles (Amendment) Act, 1994 that after enactment of the 1988 Act, several representations and suggestions were made from the State Governments, transport operators and members of public in relation to certain provisions thereof. Taking note of the observations by various Courts and the difficulties experienced in implementing the various provisions of the Motor Vehicles Act, the Government of India appointed a Review Committee. The Review Committee in its report made the following recommendations:
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> "The 1988 Act provides for enhanced compensation for hit and run cases as well as for no fault liability cases. It also provides for payment of compensation on proof of fault basis to the extent of actual liability incurred which ultimately means an unlimited liability in accident cases. It is found that the determination of compensation takes a long time. According to information available, in Delhi alone there are 11214 claims pending before the Motor Vehicle Accidents Tribunals, as on 31.03.1990. Proposals have been made from time to time that the finalisation of compensation claims would be greatly facilitated to the advantage of the claimant, the vehicle owner as well as the Insurance Company if a system of structured compensation can be introduced. Under such a system of structured compensation that is payable for different clauses of cases depending upon the age of the deceased, the monthly income at the time of death, the earning potential in the case

> of the minor, loss of income on account of loss of limb etc., can be notified. The affected party can then have the option of either accepting the lump sum compensation as is notified in that scheme of structured compensation or of pursuing this claim through the normal channels.""

14. In **United India Insurance Co.Ltd. v. Sunil Kumar and another** reported in [2013 (2) TN MAC 737 (SC)], the Apex Court held that *'the liability to make compensation under S.163A is on the principal of no fault and, therefore, the question as to who is at fault is immaterial and foreign to an enquiry under S.163A. S.163A does not make any provision for apportionment of the liability. If the owner of the vehicle or the Insurance Company is permitted to prove contributory negligence or default or wrongful act on the part of the victim or Claimant, naturally it would defeat the very object and purpose of S.163A of the Act. Legislature never wanted the Claimant to plead or establish negligence on the part of the owner or the driver. Once it is established that death or permanent disablement occurred during the course of the user of the vehicle and the vehicle is insured, the Insurance Company or the owner, as the case may be, shall be liable to pay the Compensation, which is a statutory obligation.'*

15. Learned counsel for the appellant contended that if at all the accident occurred due to the negligence of the 4th respondent, who was the driver of the appellant, then also there is no bar for the appellant to

claim compensation under Section 163A of the MV Act, from the owner and Insurer of the other vehicle, which was involved in the accident, as the accident occurred out of the user of that motor vehicle also, though it was stationary at the time of accident. The expression used in Section 163A of the Motor Vehicles Act, is 'an accident arising out of the use of the motor vehicle', and not 'an accident caused by the motor vehicle'. The adoption of the expression 'accident arising out of the use of the motor vehicle' in preference to accident caused by the motor vehicle is therefore important and clearly indicates that, such a wider meaning was intended by adoption of that expression. Such a beneficial construction was adopted by courts to hold that the expression 'arising out of the use of the vehicle' is to be given a liberal and wide interpretation.

16. In **National Insurance Co. Ltd. v. Munesh Devi and Others** reported in [2013 KHC 5146 = 2013 ACJ 919], the Delhi High Court held that driver of a parked tanker coming into contact with overhead electric wire and dying on the spot, on climbing over the tanker to check the condition of the tanker inside, his legal heirs were eligible to get compensation as the accident arose out of the use of motor vehicle.

17. In **Shivaji Dayanu Patil v. Vatschala Uttam More** [1991 ACJ 777], a petrol tanker went off the road and fell at a distance of about 20 feet away from the highway leading to leakage of petrol and an explosion took place in the tanker resulting in fire. Persons who had

assembled near the patrol tanker sustained burn injuries and few of them succumbed to injuries. The Apex Court held that the explosion and fire resulting in injuries and death was due to the accident arising out of the use of the motor vehicle, and it cannot be said that the petrol tanker was not in use at the time when it was lying on its side, after the collision with the truck. The Apex Court further observed that the casual relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement, is not required to be direct and proximate, and it can be less immediate also. This would imply that the accident should be connected with the use of the motor vehicle, but the said connection need not be direct and immediate. The construction of the expression 'arising out of the use of a motor vehicle' in Section 163 A of the MV Act, enlarges the field of protection made available to the victims of an accident, and is in consonance with the beneficial object underlying the enactment.

18. In MACA No.1802 of 2007 **Siju v. M.K.Radha and others** decided by this Court on 12.08.2008, paragraph 8 reads as follows:

> "8. The next question to be considered is when two vehicles are involved in an accident and the rider of one of the vehicles sustains injury whether he can get compensation from the owner, insurer and the driver of the other vehicle or whether he has to get it from both. When two vehicles collided and when the third party is concerned, the question of negligence u/s 166 would be in the characteristic of composite negligence. U/s 166

> when it is considered between the two riders it may come to contributory negligence. But in a proceeding u/s 163A neither the question of composite negligence nor the question of contributory negligence arise for determination in view of the specific provision contained u/s 163A(2), that no enquiry is contemplated regarding the question of negligence. What is contemplated u/s 163A is the sustainment of an injury arising out of the use of a motor vehicle. It is true that the claimant was also using the motor vehicle but the accident took place on account of the impact between his vehicle and another vehicle. So far as the another vehicle is concerned there is a collision between the two, and so it is to be held that it had arisen out of the use of the motor vehicle, which takes in, that vehicle also. Further with respect to that vehicle, the claimant is a third party."

19. Learned counsel for the 3rd respondent contended that though the lorry owned by the appellant dashed against the lorry parked on the roadside, it is as good as the lorry of the appellant hitting against a tree or a post, standing by the side of the road and so we cannot say that the parked lorry was in any way involved in the accident. Ext.A9 scene mahazar clearly shows the damages on the left side of the lorry of the appellant, and the damages on the right side of the lorry which was parked on the western side of the road. According to the appellant, if that lorry was not parked there, at the most, his lorry might have fell into the drainage on the western side of the road, and that be so, he would not

have suffered any serious injuries including amputation of his right hand, which is a scheduled injury of permanent disability as per the Employee's Compensation Act, 1923. So according to him, the lorry, which was parked on the side of the road, was also involved in the accident, though it was kept stationary at the roadside.

20. In **Pushpa Rani Chopra v. Anokha Singh**, [1975 ACJ 396 (Delhi), a truck was stationary as its axle had broken down, and it was parked with its left front wheel on the *kacha* road and rear of the truck covered about nine feet of one side of the road. The deceased was riding a motorcycle with his daughter at the pillion seat and his son on the front. It was a dark night and there was no street light on the road. The motorcycle of the deceased dashed against the rear of the stationary truck and got under the truck with the result the deceased along with two children died on the spot. A claim petition was filed and it was submitted that the truck in question was not in use. After considering all aspects of the case, the Court came to the conclusion that the words 'use of motor vehicle' occurring in Chapter VIII under the heading "Insurance of Motor Vehicles Against Third Party Risks" have a wider meaning and held that even the stationary vehicle will also be included in the expression 'arising out of the use of the vehicle'. It was observed that the expression is, therefore, employed in a wide sense and is practically synonymous with bringing out a motor vehicle in a public place, and using the public place

for the motor vehicle, irrespective of the fact whether it was stationary or not.

21. The same view was upheld in a catena of decisions like **Mangilal Kale v. M.P. State Road Transport Corporation** [1988 ACJ 460 (MP)], **Oriental Fire and General Insurance Co. Ltd. v. Gangabai** [1992 ACJ 106 (MP)]. So this Court has no hesitation to hold that the expression 'arising out of the use of the motor vehicle' should be given an extended meaning, to include vehicles in motion as well as stationary.

22. In **National Insurance Co. Ltd (M/s.) v. P. Alagesan** [2014 KHC 5744 = 2014 ACJ 2195] the High Court of Madras, relying on a series of decisions, held that *'whenever an accident occurs, as to whether the vehicle is on road, driven, repaired, parked, kept stationary or left in an unattended condition of vehicle in question or involved in accident, the injured is entitled to make a claim for compensation under S.163A or 166 of the Motor Vehicles Act, depending upon the income. All that is required is the use of vehicle and that an accident should have occurred.'*

23. In the case on hand, there is ample evidence to show that KL-10L-8460 lorry was parked on the side of the road and KL-8/Y-9909 lorry owned by the appellant and driven by the 4th respondent, dashed against that lorry, and the appellant suffered permanent disability on amputating his right hand, due to the injuries he had suffered in that

accident.

24. Respondents 1 to 3 have no case that the lorry owned by the appellant never collided with KL-10/L-8460 lorry, if at all it was kept stationary at the roadside. Moreover there is clear evidence to show that there was collision between the lorry owned by the appellant and KL-10/L-8460 lorry parked at the roadside.

25. According to the 3rd respondent, due to the rash and negligent driving of KL-8/Y-9909 lorry by the 4th respondent, that lorry dashed against KL-10/L-8460 lorry, which was parked on the roadside and the appellant sustained injuries thereby. The 3rd respondent invited attention of this Court to Ext.A2 final report in Crime No.120 of 2004, which shows that, the 4th respondent herein i.e., the driver of the appellant was the accused in that case. After investigation, Police found that the accident occurred due to the rash and negligent driving of KL-8/Y-9909 lorry by the 4th respondent. PW1 also admitted that the criminal case was against his driver, alleging that the accident occurred due to his rash and negligent driving. Moreover, during cross-examination PW1 admitted that the 4th respondent pleaded guilty to the charge in the criminal case, and remitted the fine amount. So the 3rd respondent would contend that the accident occurred due to the rash and negligent driving of the lorry of the appellant, by the 4th respondent, and so, the 3rd respondent has nothing to do with that accident, or with the claim of the appellant.

26. As we have already seen, in a claim under Section 163 A of the MV Act, the claimant shall not be required to plead or establish that the death or permanent disablement, in respect of which the claim has been made, was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned, or of any other person as envisaged under Section 163 A (2) of the MV Act.

27. A Claim under Section 163A of the MV Act can be invoked even in cases where negligence is on the part of the victim.

28. The Honourable Supreme Court in **Deepal Girishbhai Soni and others v. United India Insurance Co.Ltd., Baroda,** reported in [2004 (1) TN MAC (SC) 193] held that *'S.163 A has an overriding effect and provides for special provisions as to payment of compensation on structured formula basis. Sub Section (1) of S.163A contains a non obstante clause, in terms whereof, the owner of the motor vehicle or the authorised insurer, is liable to pay, in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. The expression notwithstanding anything contained in this Act or in any other law for the time being in force, in S.163A has been used, by the Parliament intended to insert a non obstante clause of wide nature, which would mean that, the provisions of S.163 A would apply despite the contrary provisions existing in the said*

Act or any other law for the time being in force. Thus, S.163 A of the M.V.Act covers cases where even negligence is on the part of the victim.'

29. From the foregoing discussion, we can conclude that KL-10/L-8460 lorry was also involved in the accident as there occurred collision with that vehicle though it was parked by the side of the road. Being a claim under Section 163 A of the MV Act, the appellant shall not be required to plead or establish any wrongful act or negligence or default of the owner of the vehicle or vehicles concerned or of any other person. As far as the parked vehicle is concerned, the appellant can be considered as a Third Party.

30. Learned Tribunal found that though the claim was under Section 163A of the MV Act, the appellant has definitely pleaded rashness and negligence against the 2nd respondent, in negligently parking the lorry without park light or any other indication. So the learned Tribunal found that when negligence is alleged against the 2nd respondent, the claim would have been made under Section 166 of the MV Act. In order to substantiate that fact, learned Tribunal relied on the claim petition filed by the appellant/claimant. In paragraph 28 of the claim petition, it is stated that the above accident occurred on a public road and it was solely due to the rash and negligent act on the part of the 2nd respondent, driver of KL-10/L-8460 lorry. It was further contended that the 2nd respondent had parked the said vehicle in a very negligent manner, without putting on the

park lights, and without any other precautionary indications, and in a place not suitable to park vehicles, and so the 2nd respondent is liable to pay the amount of compensation claimed by the petitioner. It is true that as the MV Act is a beneficial legislation even if a claim petition is made under Section 163 A of the MV Act, an injured/legal representatives of the deceased, should not be deprived from getting a just compensation irrespective of the fact, whether there was any pleading or not with reference to Section 166 of the MV Act, and that is the duty of the Tribunal/Court to consider the claim. As we know, a claim under Section 166 of the MV Act, is based on fault liability principle unlike in a claim under Section 163 A of the MV Act. In a claim under Section 166 of the MV Act, we will have to find out who was at fault. Here, in the case on hand, there is clear evidence to show that the accident occurred due to the rash and negligent driving of the lorry owned by the appellant by the 4th respondent-driver, and that is fortified by the fact that the 4th respondent pleaded guilty to the charge and remitted the fine amount. PW1-the appellant also admitted that fact. If the accident occurred due to the rash and negligent driving of KL-10/L-8460 lorry by the 4th respondent, the appellant, who is the owner of that lorry, himself is vicariously liable, which the 5th respondent is liable to indemnify, on the basis of the contract of indemnity. The appellant, who is vicariously liable for the fault of his driver, cannot claim compensation from himself, as if

he is a third party. Moreover, as he is a party to Ext. B1 Insurance Policy, he is governed by the terms and conditions of that policy. We have already found that no premium was paid for personal accident coverage of the owner as per Ext.B1 Policy and so, the appellant was not entitled to get any compensation from the 5th respondent-Insurer. The appellant himself admitted in court that he is not making any claim against the 5th respondent. So, the scope for treating his claim under Section 166 of the MV Act is foreclosed.

31. Now let us see whether the claim of the appellant under Section 163 A of the MV Act is liable to be honoured by the 3rd respondent. Section 163 A of the MV Act was introduced to facilitate speedy disposal of accident claims on a structured formula basis, depending upon the age of the injured/deceased and the monthly income at the time of death etc. etc. The Second schedule for compensation for third party fatal accidents/injury cases claims u/s.163 A of the MV Act, clearly says that it is applicable only to persons having maximum annual income up to Rs.40,000/-.

32. In the claim petition, the appellant has shown his monthly income as Rs.3,300/- per month, so that his annual income will be Rs.39,600/-, which will bring his claim well within the ambit of Section 163 A of the MV Act. According to the appellant, he had entered into a contract with Bharat Petroleum Co. Ltd for transportation of petroleum

products and he was getting monthly income of Rs.13,000 from BPCL. But he would say that since he lost his right hand in the accident, he sold his lorry to some other person, and so he lost his income from BPCL. He produced Ext. A6 Sale Agreement dated 17.04.2004, by which he sold his lorry. But the person who purchased the lorry was not examined and admittedly the Registration Certificate of that lorry is still in the name of the appellant. Moreover, Ext. A6 will show that the said contract with the BPCL was not terminated and it was still continuing. Though the lorry was said to be transferred in the name of one Mr.Ajithan, it was not seen mentioned that, from the date of Ext.A6 Agreement, Sri.Ajithan will be receiving the amount from BPCL. During cross-examination, PW1 admitted that he entered into the contract with the BPCL, only after the accident. So there was no chance to lose that income because of the accident. He categorically admitted before court that still the contract amount from BPCL is disbursed in his name every month. Learned Tribunal found that the income stated as Rs.3,300/- was apart from the monthly income of Rs.13,000/- received from BPCL. If the appellant entered into a contract with the BPCL, after the accident, for a monthly income of Rs.13,000/-, in all probability, Ext.A6 Agreement was executed as a ruse to show that, he lost his income by selling away the lorry. Still the Registration Certificate of that lorry is in the name of the appellant, and still he is receiving the monthly income of Rs.13,000/- from BPCL, as

borne out from his own admissions. So learned Tribunal rightly found that the appellant was not entitled to make a claim for compensation under Section 163 A of the MV Act as his monthly income was more than Rs.15,000/-. There was no evidence to show that the amount disbursed in his name from BPCL was being paid to somebody else. Since the appellant was not coming within the low income group with maximum annual income up to Rs.40,000/-, his claim under Section 163 A of the MV Act was liable to be dismissed. So I find no illegality or impropriety in the impugned award, warranting interference by this Court, except to the extent of setting aside the finding of the Tribunal that the expression 'user of vehicle' can be applied only as against the petitioner's lorry No. KL-8/Y-9909.

In the result, the appeal fails and hence dismissed.

Sd/-

SOPHY THOMAS
JUDGE

DSV/23.03.2023.